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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC
(TWO BRIEFINGS)

WHEN: November 21 at 9:00 am and 1:30 pm
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

NEW YORK, NY

WHEN: December 13, 9:30 am–12:30 pm
WHERE: National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY
RESERVATIONS: 1–800–347–1997

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue..

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6753 of November 3, 1994

National Family Caregivers Week, 1994

By the President of the United States of America

A Proclamation

The number of Americans aged 65 or older is increasing steadily. In 1992, seniors represented 12.7 percent of the U.S. population—about one in every eight Americans. Americans are living longer, healthier lives than at any other time in our history, yet one-third of older people evaluate their health as only fair or poor. About 6.1 million senior citizens have disabilities that leave them in need of regular care and help with their daily tasks.

When someone we love becomes ill, has an accident, or needs assistance, we can all become caregivers at a moment's notice. Care is usually provided by family members, often wives, daughters, and daughters-in-law, who may sacrifice their own employment opportunities to bring joy and comfort into the lives of loved ones. Selflessly offering their energy and love to those in need, family caregivers have earned our heartfelt gratitude and profound respect.

Caregivers understand how much we need and depend on one another. Indeed, Americans understand that our strength as a Nation has always flowed from the sturdy bonds of family. In recognition of this fact, we all must work harder to ensure that our Nation's caregivers receive the support and assistance they deserve.

The Congress, by Public Law 103–319, has designated November 20, 1994 through November 26, 1994, as "National Family Caregivers Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of November 20–26, 1994, as National Family Caregivers Week and call upon all government agencies and the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc 94–27672
Filed 11–3–94; 2:15 pm]
Billing code 3195–01–P

Rules and Regulations

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Employee Elections To Contribute to the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) is amending its regulations that describe the periods within which employees may make certain elections in regard to contributions to the Thrift Savings Plan (TSP). This amendment will establish a permanent schedule of TSP open seasons, thereby eliminating the regulatory requirement that the Board publish an advance notice in the **Federal Register** announcing the beginning and ending dates of each open season.

DATES: This amendment is effective December 7, 1994.

FOR FURTHER INFORMATION CONTACT: David L. Hutner at (202) 942–1661.

SUPPLEMENTARY INFORMATION: The Board published a notice of proposed rulemaking in the **Federal Register** on August 16, 1994 (59 FR 41990). No comments were received. After further review the Board has decided that no changes in the proposed rule are necessary. Accordingly, the proposed rule is published as a final rule.

Each year, there are two open seasons during which participants may elect to commence contributions to the TSP, change the amount of their contributions or the allocation of their contributions among the TSP investment funds, or terminate contributions without forfeiting the ability to resume contributing during the next open season. The regulatory notice requirement for open seasons was established by the Board in 1987 shortly after the Thrift Savings Plan came into existence. At that time, it was not clear whether open seasons would occur at the same time and for the same duration each year. However, since then there have been two open seasons each year: May 15–July 31 and November 15–January 31. The last month of each open season has been designated the "election period", which is defined in 5 CFR § 1600.1. Since the open seasons have not varied since 1988, the Board is now amending its regulations to establish a permanent schedule for the beginning and ending dates and to eliminate the requirement that an advance notice of each open season be published in the **Federal Register**.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect Board procedures relating to the requirement to publish advance notice of each open season.

EO 12291

I certify that this is not a major rule.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 5 CFR Part 1600

Employment benefit plans, Government employees, Retirement, Pensions.

Dated: October 27, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, part 1600 of chapter VI of title 5 of the Code of Federal Regulations is amended as set forth below.

PART 1600—[AMENDED]

1. The authority citation for 5 CFR part 1600 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432(b)(1)(A), 8474(b)(5) and (c)(1).

2. Section 1600.2 is amended by revising paragraph (b) to read as follows:

§ 1600.2 Periods for making elections.

* * * * *

(b) *Subsequent open season.* An open season will begin on November 15 of each year and end on January 31 of the following year and another open season will begin on May 15 of each year and end on July 31 of the same year. If the last day of an open season falls on a Saturday, Sunday, or legal holiday, the open season shall be extended through the next business day.

* * * * *

[FR Doc. 94–27526 Filed 11–4–94; 8:45 am]

BILLING CODE 6760–01–M

5 CFR Parts 1605, 1630, 1631, 1632, and 1650

Thrift Savings Plan Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) is amending its regulations to correct its address and telephone number. The Board relocated from 805 Fifteenth Street NW., Washington, DC to 1250 H Street NW., Washington, DC 20005, effective December 20, 1992.

EFFECTIVE DATE: This amendment is effective November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, (202) 942–1662.

SUPPLEMENTARY INFORMATION:

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days.

Accordingly, and under the authority of 5 U.S.C. 8474, the Board hereby amends 5 CFR Parts 1605, 1630, 1631, 1632, and 1650 as set forth below:

PARTS 1605, 1630, 1631, 1632, and 1650—[AMENDED]

§§ 1605.8, 1630.4, 1630.13, 1631.3, 1631.4, 1631.6, 1631.10, 1632.4, 1632.11, 1650.28, and 1650.32 [Amended]

1. In the sections indicated below, removed the words "805 Fifteenth Street" wherever they appear, and add in their place the words "1250 H Street":

a. Section 1605.8(b)(2);

b. Section 1630.4(b);
c. Section 1630.13(a);
d. Section 1631.3(b);
e. Section 1631.4(a);
f. Section 1631.6(a);
g. Section 1631.10(a);
h. Section 1632.4(c);
i. Section 1632.11(b);
j. Section 1650.28(c);
k. Section 1650.32(b).

§ 1650.51 [Amended]

2. Remove the words "805 15th Street" and add in their place the words "1250 H Street" in section 1650.51(b).

§§ 1631.4 and 1650.28 [Amended]

3. Remove the location designation "Suite 500" as it appears in § 1631.4(a) and add in its place the location designation "Room 4308"; and remove the telephone number "(202) 523–5066" as it appears in § 1650.28(c), and add in its place the telephone number "(202) 942–1600".

Dated: November 1, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–27512 Filed 11–4–94; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV94–905–1FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Expenses and Assessment Rate for 1994–95 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Deparment of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the 1994–95 fiscal year under Marketing Order No. 905. Authorization of this budget enables the Citrus Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1994, through July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–5127; or William Pimental, Southeast Marketing Field Office, Fruit & Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (813) 299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, as amended, [7 CFR Part 905] regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges, grapefruit, tangerines, and tangelos grown in Florida are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable citrus fruit during the 1994–95 fiscal year, beginning August 1, 1994, through July 31, 1995. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and approximately 10,200 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal period shall apply to all assessable citrus fruit handled from the beginning of such period. An annual budget of expenses and assessment rate is prepared by the Committee and submitted to the Department for approval. The Committee members are handlers and producers of Florida citrus. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by the expected cartons (⅘ bushel) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The annual budget and assessment rate are usually recommended by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee met June 21, 1994, and unanimously recommended expenses of $210,000 for the 1994–95 fiscal year, with an assessment rate of

$0.003 per 4/5 bushel carton of fresh fruit shipped.

In comparison, 1993–94 budget expenses were $200,000 with an approved assessment of $0.00285. This represents increases of $10,000 in expenses and of $0.00015 in the assessment rate from the amounts recommended for the current fiscal year.

The assessment rate, when applied to anticipated shipments of 66,000,000 cartons of assessable fruit, will yield a total of $198,000 in assessment income. Interest income for 1994–95 is estimated at $2,000. This, along with $10,000 from the Committee's authorized reserve fund, will be adequate to cover additional expenses. Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $125,000, will be within the maximum permitted by the order of approximately one-half of one fiscal year's expenses.

Major expense categories for the current fiscal year include $98,300 for salaries, $36,000 for the Manifest department, and $12,600 for insurance and bonds.

An interim final rule was issued on August 8, 1994, and published in the **Federal Register** [59 FR 41378, August 12, 1994]. A 30-day comment period was provided for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the program began April 1, 1994. The marketing orders require that the rates of assessment apply to all assessable oranges, grapefruit, tangerines, and tangelos handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action without change as a final rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS, GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR Part 905 which was published at 59 FR 41378 on August 12, 1994, is adopted as a final rule without change.

Dated: November 1, 1994.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 94–27518 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 927

[Docket No. FV94–927–1FIR]

Expenses and Assessment Rate for the 1994–95 Fiscal Year; Winter Pears Grown in Oregon, Washington, and California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1994–95 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC. 20090–6456, telephone: (202) 720–5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, Green-Wyatt Federal Building, Room 369, Portland, Oregon, telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 927 [7 CFR Part 927] regulating the handling of winter pears grown in Oregon, Washington, and California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, winter pears grown in Oregon, Washington, and California are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable pears handled during the 1994–95 fiscal year, which began July 1, 1994, and ends June 30, 1995. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears regulated under the marketing order each season and approximately 1,850 winter pear producers in Oregon, Washington, and California. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The Oregon, Washington, and California winter pear marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable winter pears handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Oregon, Washington, and California winter pears. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of pears. Because this rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on June 3, 1994, and unanimously recommended total expenses of $6,835,926 for the 1994–95 fiscal year. In comparison, the 1993–94 fiscal year expense amount was $6,933,615, which is $97,689 more than the amount recommended for the current fiscal year.

The Committee also unanimously recommended an assessment rate of $0.43 per standard box, or equivalent for winter pears. The Committee did not recommend a supplemental assessment rate for Anjou variety pears this fiscal year. In comparison, the 1993–94 winter pear assessment rate was $0.45 per standard box, or equivalent and $0.04 for the supplemental assessment rate on Anjou variety pears. This represents a $0.02 decrease in the assessment rate recommended for this fiscal year.

This rate, when applied to anticipated winter pear shipments of 13,817,000 boxes or equivalent, will yield a total of $5,941,310 in assessment income. Assessment income, along with $401,324 from other income sources, and $493,292 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The $493,292 withdrawal of funds from the Committee's authorized reserve will result in no reserve remaining at the end of the 1994–95 fiscal period.

Major expense categories for the 1994–95 fiscal year include $5,572,500 for advertising, $276,340 for SOPP data research, $276,340 for winter pear improvement, $142,310 for salaries and benefits, and $612,442 for unshared contingency.

An interim final rule was issued on August 22, 1994, and published in the **Federal Register** [59 FR 44023, August 26, 1994] and provided a 30-day comment period for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the program began July 1, 1994. The marketing order requires that the rate of assessment apply to all assessable winter pears handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 927

Marketing agreements and orders, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

Accordingly, the interim final rule amending 7 CFR Part 927 which was published at 59 FR 44023 on August 26, 1994, is adopted as a final rule without change.

Dated: November 1, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27521 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 928

[Docket No. FV94–928–4FR]

Papayas Grown in Hawaii; Final Rule to Change the Membership of the Papaya Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the membership of the Papaya Administrative Committee (committee), the agency responsible for local administration of the Hawaiian papaya marketing order. This rule increases the number of grower members on the committee from six to nine and reduces the number of handler members from six to three. The number of growers in the industry has increased in recent years, during the same period the number of handlers has remained constant.

EFFECTIVE DATE: This final rule becomes effective December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2526–S, Washington, DC 20090–6456; telephone (202) 690–3670; or Martin J. Engeler, Assistant Officer-In-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order

No. 928 [7 CFR Part 928], as amended, regulating the handling of papayas grown in Hawaii, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or an exemption therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this rule on small entities.

The purpose of the RFA is to fit regulatory rules to the scale of business subject to such rules in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 120 papaya handlers subject to regulation under the marketing order covering fresh papayas grown in Hawaii, and approximately 400 producers of papayas in Hawaii. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

Pursuant to § 928.120, the committee currently consists of 13 members. Each member has an alternate. Six members are growers, six are handlers, and one is a public member. The six handler members and alternates are nominated from the production area at large. Grower membership on the committee is apportioned among three districts. District 1 (the Island of Hawaii) is represented by four members and alternates, and District 2 (the Islands of Kauai, Niihau, Maui, Molakai, Lanai, Kahoolawe; and Kalawao county), and District 3 (the Island of Oahu) by one member and alternate each. Any grower organization is limited to two members on the committee. Any handler organization is limited to one member on the committee.

Section 928.20 also allows the number of grower and handler members and alternate members on the committee and the composition of the committee between growers and handlers to be changed as provided in § 928.31(o). Paragraph (o) of § 928.31 also authorizes the committee, with the approval of the Secretary, to redefine the districts into which the production area is divided, reapportion membership on the committee. Any such changes are required to reflect, insofar as practicable, structural changes within the industry and shifts in papaya production within the production area.

This final rule changes the composition of the committee by increasing grower representation on the committee from six grower members to nine and reducing handler representation from six members to three. This change was recommended by the committee on April 22, 1994, by a vote of 7 in favor, 3 opposed, and 2 abstentions.

The papaya industry has historically demonstrated a policy of maintaining equitable representation among handlers and growers. In 1989, committee membership was changed by allocating three grower member positions from District 1 to handlers in the State of Hawaii. This resulted in an increase from three to six handler members and a decrease in grower members from District 1 from seven to four. The committee indicated that the number of growers in the industry has increased from 325 to 400 since 1989, while the number of handlers has remained constant. The committee contends that these factors support their recommendation to change committee membership. This action is intended to provide increased grower representation on the committee consistent with the increased number of growers. This rule will not impose any additional costs on growers or handlers.

Members supporting this change stated that the marketing order is designed to primarily benefit growers and for that reason growers should have a majority on the committee. Members supporting the recommendation also stated that this change will increase growers' influence in matters concerning amendments to the marketing order, and market research and development and promotion activities. The majority of that increase occurred in District 1. Members opposed to the change in the current committee membership stated that the marketing order should benefit the entire industry, and believe the current composition of the committee provides a good balance for the industry.

The committee indicated that the increase in the number of growers producing papayas in District 1, justified increasing from four to seven the number of growers representing District 1 on the committee. Committee members supporting this change contend that the vast majority of growers and the highest level of papaya production are located in District 1. District 1 is expected to produce 55.6 million pounds during the 1993–94 season. Over the last four years District 1 has had an average annual production of 54.1 million pounds of papayas. For the same period District 2 has an average production of 760,000 pounds, and District 3 has an average production of 1,020,000 pounds of papayas.

The proposed rule concerning this action was published in the September 2, 1994, **Federal Register** [59 FR 45630], with a 30-day comment period ending October 3, 1994. No comments were received.

Based on the available information, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR Part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 928.120 is revised to read as follows:

§ 928.120 Committee reapportionment

The Papaya Administrative Committee shall consist of 13 members and alternate members. Nine of the members shall represent growers, and three shall represent handlers. Seven grower members and their alternates shall represent District 1, one grower member and alternate shall represent District 2, and one grower member and alternate shall represent District 3. No grower organization shall have more than two members on the committee. The three handler members shall be nominated from the production area at large. No handler organization is permitted to have more than one handler member on the committee. One voting public member and alternate shall also be included on the committee. The eligibility requirements and nomination procedures for the public member and alternate are specified in § 928.122.

Dated: November 1, 1994.

Eric M. Forman,

Deputy Director; Fruit and Vegetable Division.

[FR Doc. 94–27519 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 929

[Docket No. FV94–929–2FIR]

Expenses and Assessment Rate for the 1994–95 Fiscal Year for the Marketing Order Covering Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Cranberry Marketing Committee (Committee) under Marketing Order No. 929 for the 1994–95 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: September 1, 1994, through August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Brenda D. Hill or Mark Hessel, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act".

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, cranberries grown in 10 States are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries during the 1994–95 fiscal year beginning September 1, 1994, through August 31, 1995. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York who are subject to regulation under the cranberry marketing order and approximately 1,050 producers of cranberries in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of cranberry producers and handlers may be classified as small entities.

The cranberry marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable cranberries handled from the beginning of such year. The budget of expenses for the 1994–95 fiscal year was prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are producers of cranberries. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season

starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee conducted a mail vote and unanimously recommended 1994–95 marketing order expenses of $164,690 and an assessment rate of $0.03 per 100-pound barrel of cranberries. In comparison, 1993–94 budgeted expenses were $155,000, with an approved assessment rate of $0.03 per 100-pound barrel of cranberries. This represents an increase of $9,690 in expenses recommended for this fiscal year, with the assessment rate remaining unchanged.

Assessment income for 1994–95 is estimated to total $122,580 based on anticipated fresh domestic shipments of 4,086,000 barrels of cranberries. The assessment income, plus $3,750 in interest income and a withdrawal of $38,360 from the Committee's authorized reserve fund will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1994–95 fiscal year are estimated to be $150,000. The reserve fund will be within the maximum permitted by the order of one fiscal year's expenses.

Major expense categories for the 1994–95 fiscal year include $70,110 for operating expenses, $40,500 for travel expenses, and $33,241 for administrative expenses.

An interim final rule was published in the **Federal Register** [59 FR 44025, August 26, 1994] and provided a 30-day comment period for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the program began September 1, 1994. The marketing order requires that the rate of assessment apply to all assessable cranberries handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Accordingly, the interim final rule amending 7 CFR Part 929 which was published at 59 FR 44025 on August 26, 1994, is adopted as a final rule without change.

Dated: November 1, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27516 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 931

[Docket No. FV94–931–1FIR]

Fresh Bartlett Pears Grown in Oregon and Washington; Expenses and Assessment Rate for the 1994–95 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1994–95 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone: 202–720–5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, Room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone: 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Marketing Order No. 931, both as amended (7 CFR Part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Bartlett pears grown in Oregon and Washington are subject to assessments. Funds to administer the Bartlett pear marketing order are derived from such assessments. It is intended that the assessment rate as specified herein will be applicable to all assessable pears during the 1994–95 fiscal year beginning July 1, 1994, and ends June 30, 1995. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity

is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers regulated under the marketing order each year and approximately 1,800 producers of Bartlett pears. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Bartlett pear handlers and producers in Oregon and Washington may be classified as small entities.

The budget of expenses for the 1994–95 fiscal year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears grown in Oregon and Washington. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on June 2, 1994, and unanimously recommended total expenses of $96,410 with an assessment rate of $0.02 per standard box or equivalent for the 1994–95 fiscal year. In comparison, 1993–94 budgeted expenses were $112,425, with an approved assessment rate of $0.025 per standard box or equivalent. This represents a $16,015 decrease in expenses and a $0.005 decrease in the assessment rate from the amounts recommended for the current fiscal year.

The assessment rate, when applied to anticipated pear shipments of 2,721,886 standard boxes or equivalent, will yield $54,438 in assessment income. Assessment income, combined with $4,000 from other income sources, and $37,972 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The withdrawal of $37,972 from the Committee's authorized reserve fund will result in no reserve remaining at the end of the 1994–95 fiscal year.

Major expense categories for the 1994–95 fiscal year include $42,683 for salaries, $17,597 for unshared contingency, and $4,695 in employee health benefits.

An interim final rule was published in the **Federal Register** on [59 FR 44311, August 29, 1994] and provided a 30-day comment period for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the program began July 1, 1994. The marketing order requires that the rate of assessment apply to all assessable Bartlett pears handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR Part 931 which was published at 59 FR 44311 on August 29, 1994, is adopted as a final rule without change.

Dated: November 1, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27520 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 932 and 944

[Docket No. FV93–932–3FIR]

Olives Grown in California and Imported Olives; Revisions of Outgoing Inspection Requirements and Size Requirements for Whole Pitted Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with changes, the provisions of an interim final rule amending outgoing inspection regulations under the California olive marketing order to authorize handlers to use in-plant Quality Assurance Programs (QAPs) in lieu of continuous in-line inspection. This rule also permits handlers to size whole pitted olives by diameter as an alternative to the requirement that such olives be sized by weight prior to pitting. Conforming changes are made to the size requirements for imported whole pitted olives so that the requirements for domestic and imported olives are applied similarly. The changes in the California olive requirements are designed to result in more efficient handling operations. The changes in import requirements are necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: Effective on December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey

Street, Suite 102B, Fresno, California 93721, telephone 209–487–5901; or Caroline Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 148 and Marketing Order No. 932 [7 CFR Part 932], both as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule is also issued pursuant to section 8e of the Act, which provides that whenever certain specified commodities, including olives, are subject to grade, size, quality, or maturity requirements under a Federal marketing order, the same or comparable requirements shall be applied to imports of those commodities.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are 5 handlers of olives regulated under the order, and approximately 1,350 producers in the regulated area. In addition, there are approximately 25 importers of olives subject to the requirements of the olive import regulation. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms, which include olive handlers and importers, are defined as those whose annual receipts are less than $5,000,000. The majority of the olive producers and importers may be classified as small entities. None of the olive handlers may be so classified.

The interim final rule was issued on July 21, 1994, and published in the **Federal Register** [59 FR 38104, July 27, 1994], with an effective date of July 27, 1994. That rule amended §§ 932.152, and 932.401 of regulations in effect under the order. That rule provided a 30-day comment period which ended August 26, 1994. No comments were received.

The California Olive Committee (committee), the agency responsible for local administration of the order, met on December 14, 1993, and unanimously recommended revising outgoing inspection procedures to permit handlers to establish a QAP in lieu of maintaining continuous in-line outgoing inspection of processed olives. Outgoing inspection is the assignment of a final grade to the product after processing is completed, according to the requirements of the U.S. Standards for Grades of Canned Ripe Olives (Standards) [7 CFR 52.3751 to 52.3764]. The committee also recommended that handlers be allowed to size whole pitted olives by diameter after pitting, as an alternative to the requirement that such olives be sized by weight prior to pitting.

Prior to the interim final rule, § 932.52 of the order and § 932.152 of the regulations required handlers to maintain continuous in-line outgoing inspection for the handling of processed olives. Also, pursuant to § 932.53, such outgoing inspection is performed by the Processed Products Branch (PPB) of the Department. Continuous in-line outgoing inspection consists of inspection and grading services in an approved plant whereby one or more PPB inspector(s) are present at all times the plant is in operation to make in-process checks on the preparation, processing, packing, and warehousing of all products and to assure compliance with sanitary requirements. However, costs for continuous in-line outgoing inspection have increased in recent years. Thus, the PPB is prepared to develop QAP inspection procedures which will provide quality assurance certification for California olive handlers, thereby reducing handlers' inspection costs.

Currently, most handlers employ their own quality-control personnel. The PPB is prepared to establish QAPs with individual handlers as provided in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products" [7 CFR Part 52.2]. As established, handlers will be permitted to use a QAP inspection procedure rather than continuous in-line outgoing inspection. Under a QAP, the PPB provides training for the handler's quality-control personnel. The handler's quality-control personnel will be trained in the same procedures currently used by the PPB inspectors. Once the handler's quality-control personnel are trained to properly perform the same duties and responsibilities as a PPB inspector, a period of evaluation of the reliability of the handler's quality control responsibilities begins. This is the reliability evaluation period. At such time as the handler's quality-control personnel successfully complete the reliability evaluation period, a QAP will begin operation with oversight provided by the PPB. The PPB inspectors will continue to issue certificates of inspection. Certificates of inspection will be based on outgoing inspection records maintained by the handler's QAP personnel. These will be verified through spot-checks and sample regrading by PPB inspectors. A QAP will continue to assure safe, wholesome, and uniformly high-quality processed products.

Under a QAP, each handler and the PPB will develop an individually

written plan tailored to each handler's facility. A contract between the handler and the PPB will also be developed based upon the terms of the QAP. The contract will be signed at the beginning of the reliability evaluation. Once a handler's QAP is approved, the handler is notified in writing and the PPB begins verifying the work of the handler's QAP personnel. Such verification may include reviews of plant sanitation, quality and non-quality product analyses, procedures and/or techniques, case-stamping, checkloading, condition of container, or other types of procedures normally performed by the PPB. Inclusion of any or all of these verification procedures will be determined by the operating characteristics of each handler's facility or facilities.

In the event deviations from proper QAP procedures are detected by the PPB during the reliability verification process, the handler will be informed of the problem and corrective action required. If corrective action is taken, the QAP continues in operation. Continued deviations may result in suspension of QAP approval. The suspension may be permanent or temporary and may only be restored upon concurrence by the PPB. During any suspension, the handler would be required to use continuous in-line inspection.

Establishing a QAP inspection procedure meets marketing order inspection requirements, and provides handlers with an alternative to continuous in-line inspection (which requires the presence of a PPB inspector during final processing prior to the packaging of olives). To effectuate this change, paragraphs (a) and (b)(1) of § 932.152, Outgoing regulations, are revised to add authority for handlers to use either the QAP process or continuous in-line inspection.

Section 932.52 authorizes sizing of whole pitted olives based upon count-per-pound designations (the actual weight of individual fruit) or modifications recommended by the committee and approved by the Secretary. Prior to the interim final rule, § 932.152 specified that all processed olives must be sized in accordance with the count-per-pound designations established for canned whole ripe olives, and further required that such sizing be done prior to pitting. This final rule provides an alternative method for sizing whole pitted olives to provide handlers with more flexibility in their operations while ensuring that appropriate size standards are continued for whole pitted olives.

The Standards provide a method for sizing whole pitted fruit on the basis of illustrations and approximate diameter ranges (§ 52.3754, Table I). For example, olives that are "Jumbo" in size are those that are approximately 22 to 24 millimeters in diameter and conform closely with the applicable illustration in Table I. The committee believes that this sizing method may be more appropriate for whole pitted olives, which now account for a substantial majority of the California olives packaged in the whole form. Thus, this rule authorizes the sizing of whole pitted olives after pitting in accordance with the illustrations and approximate diameter ranges provided in the Standards.

The Standards also provide allowances for size variances for whole pitted olives in § 52.3756. The requirements of U.S. Grade C (the minimum allowed under the order), provide that of the 60 percent, by count, of the olives that are most uniform in size, the diameter of the largest olive cannot exceed the diameter of the smallest olive by more than 4 millimeters. These variances will be applied to whole pitted olives when handlers choose to have their pitted olives sized by diameter, after pitting. The committee believes that these guidelines for sizing whole pitted olives are sufficient and that no additional specifications relating to size are needed at this time.

To provide for this change in whole pitted olive sizing requirements, paragraph (f) of § 932.152 is revised to add authority for sizing by diameter as provided in the Standards. In addition, paragraph (b)(1) of § 932.152 is revised by deleting the sentence which requires sizing prior to pitting. Also, paragraph (b)(2) is revised to reflect the elimination of the in-line inspection and sizing prior to pitting requirements.

This rule changes the interim final rule published in the **Federal Register** July 27, 1994 [59 FR 38104]. That rule modified Table II in § 932.152, paragraph (g)(1), to conform to rule changes made in 1991. However, further changes were made to Table II in an interim final rule published in the **Federal Register** on September 13, 1994 [59 FR 46907]. This final rule therefore conforms with the changes in the most recent interim final rule.

In accordance with section 8e of the Act, olives imported into the United States are subject to comparable size requirements as established for domestically grown olives under the order. Those requirements are found in Olive Regulation 1 [7 CFR 944.401].

Under the import regulation, canned pitted ripe olives are subject to minimum size requirements in terms of a minimum diameter and a specific tolerance for undersized fruit. The undersize tolerances set forth in the import regulation are based upon those established for canned whole olives under the California olive marketing order.

As previously explained, this final rule establishes size requirements for canned pitted olives under the order in terms of illustrations, approximate diameter ranges, and size variances which are set forth in the Standards. Thus, in accordance with section 8e of the Act, conforming changes are made in the minimum size requirements for imported canned pitted olives so that such requirements are applied in a manner similar to that under the order.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including information and recommendations submitted by the committee and other available information, it is found that finalizing the interim final rule, with changes, as published in **Federal Register** [59 FR 38104], will tend to effectuate the declared policy of the Act.

Lists of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR Parts 932 and 944 are amended as follows:

1. The authority citation for both 7 CFR Parts 932 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 932—OLIVES GROWN IN CALIFORNIA

2. Accordingly, the interim final rule amending 7 CFR Part 932 which was published at 57 FR 38104 on July 27, 1994, is adopted as a final rule with the following change:

Table II in § 932.152(g)(1) is revised to read as follows:

§ 932.152 Outgoing regulations.

* * * * *

(g) * * *

(1) * * *

TABLE II.—LIMITED USE SIZE OLIVES

Variety	Average count range (per pound)
Group 1, except Ascolano, Barouni, and St. Agostino.	76–90, inclusive.
Group 1, Ascolano, Barouni, and St. Agostino.	106–140, inclusive.
Group 2, except Obliza.	141–180, inclusive.
Group 2, Obliza	128–140, inclusive.

* * * * *

PART 944—FRUITS, IMPORT REGULATIONS

3. Accordingly, the interim final rule amending 7 CFR Part 944 which was published at 59 FR 38104 on July 27, 1994, is adopted as a final rule without change.

Dated: November 1, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27517 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–SW–08–AD; Amendment 39–9058; AD 94–22–09]

Airworthiness Directives; Bell Helicopter Textron, Inc.—Manufactured Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, UH–1P, TH–1F and TH–1L Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. restricted category military Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and TH–1L helicopters, that currently requires an inspection before the first flight of each day of certain tail rotor drive shafts and the tail rotor drive shaft hanger bearings (bearings) for grease leakage, security, overheat conditions, binding, or roughness until the bearings are replaced. This amendment requires the same inspection of the bearings, but also requires replacement of the affected bearings within the next 100 hours time-in-service and extends the requirements of this AD to the Model UH–1P and TH–1F helicopters that were recently type certificated. This amendment is prompted by an accident involving a bearing failure, and by the certification of two additional affected helicopter models. The actions specified by this AD are intended to prevent failure of the bearing, failure of the tail rotor drive shaft, and subsequent loss of control of the helicopter.

DATES: Effective November 22, 1994.

Comments for inclusion in the Rules Docket must be received on or before January 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–08–AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas 76137, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: On February 5, 1992, the FAA issued Priority Letter (PL) AD 92–03–14, applicable to Bell Helicopter Textron, Inc. (BHTI)-manufactured Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and TH–1L helicopters, to require an inspection before the first flight of each day of certain tail rotor (T/R) drive shafts and T/R drive shaft hanger bearings (bearings) for grease leakage, security, overheat conditions, binding, or roughness until the affected bearings are replaced. That action was prompted by an accident involving a BHTI Model 412 helicopter that experienced a bearing failure. Inspections performed as part of the accident investigation found metal particles from the manufacturing process in the bearings. Contaminated bearings can seize and stop rotating, causing the spline coupling shaft to rotate inside the bearing and overheat. That condition, if not corrected, could result in failure of the bearing, failure of the T/R drive shaft, and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that the affected bearings need to be replaced within the next 100 hours time-in-service in lieu of continued inspections before the first flight of each day as required by the PL AD. In addition, Type Certificate No. H12NM was issued March 30, 1993, to Western International Aviation, Inc. for Model UH–1F, UH–1P, and TH–1F helicopters that use the same bearings. Therefore, this AD should be applicable to these model helicopters. Also, some editorial changes were made to the AD.

Since an unsafe condition has been identified that is likely to exist or develop on other helicopters of the same type design, this AD supersedes PL AD 92–03–14 to require the same inspection of the affected bearings, but also to require replacement of the affected bearings within the next 100 hours time-in-service. Due to the critical need to ensure the integrity of the bearings that maintain control of the T/R drive shaft through which power is provided to the T/R system, to comply with the requirements of this AD before the first flight of each day, and to start the required inspections on the additionally-affected model helicopters, this rule must be issued immediately to correct an unsafe condition in the affected helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that

summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–08–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety. Adoption of the Amendment.

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–9058, to read as follows:

AD 94–22–09 California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; Hercules; International Helicopters, Inc.; Offshore Construction; Oregon Helicopters; Pilot Personnel International, Inc.; Smith Helicopters; Southern Aero Corporation; Southwest Florida Aviation; West Coast Fabrications; and Western International Aviation Inc.: Amendment 39–9058. Docket Number 93–SW–08–AD. Supersedes Priority Letter AD 92–03–14, Docket No. 91–ASW–32.

Applicability: Bell Helicopter Textron, Inc.—manufactured Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, UH–1P, TH–1F, and TH–1L helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of a tail rotor (T/R) drive shaft hanger bearing (bearing), failure of the T/R drive shaft, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, after the effective date of this AD, determine the serial number (S/N) etched on the seal area of the bearing, part number (P/N) 204–040–623–005. If the bearing has a S/N with a prefix of T or N, accomplish the inspection specified in paragraph (b) until the affected bearing is replaced in accordance with paragraph (d) of this AD.

Note: Bearings with a S/N prefix of NC are not required to comply with this AD.

(b) Before the first flight of each day, until the affected bearings are replaced in accordance with paragraph (d) of this AD, accomplish the following inspections of the T/R drive shaft and bearings:

(1) Visually inspect the bearings for grease leakage that continues for more than 10 hours time-in-service after installation of a zero-time bearing.

(2) Visually inspect the T/R drive shaft and the bearings and housing for security and damage.

(3) Visually inspect the bearings for an overheat condition and inspect overheat indicator stripes for discoloration.

(4) Rotate the T/R drive shaft by hand while feeling the bearing housing for bearing binding or roughness.

(c) Before further flight, replace any bearings that exhibit signs of continued grease leakage, overheating, binding, roughness, or are otherwise unairworthy, and secure any insecure bearings and housings in accordance with the applicable maintenance, repair, and overhaul manuals.

(d) Within the next 100 hours time-in-service after the effective date of this AD, remove from further service any bearing, P/N 204–040–623–005, that has a S/N with a prefix of T or N, and replace with a bearing, P/N 204–040–623–005, that has a S/N without a prefix of T or N. Remove and replace the bearings in accordance with the procedures in the applicable Bell Helicopter Textron, Inc. maintenance, repair and overhaul manuals.

(e) Installation of bearings containing a prefix other than T or N constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) This amendment becomes effective on November 22, 1994.

Issued in Fort Worth, Texas, on October 24, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–26880 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–34922; File No. S7–16–94]

RIN 3235–AG11

Exemptive Relief and Simplification of Filing Requirements for Debt Securities To Be Listed on a National Securities Exchange

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting new Rule 3a12–11 under the Securities Exchange Act of 1934 ("Exchange Act") and amending certain Exchange Act rules to reduce existing regulatory distinctions between debt securities listed on a national securities exchange and those traded in the over-the-counter market. The Commission also is simplifying registration procedures under the Exchange Act for listed debt securities. The new rule and amendments will: exempt listed debt securities from restrictions on borrowing and from most of the proxy and information statement rules; provide for the automatic effectiveness

of Form 8–A registration statements for listed debt securities; and eliminate the filing fee associated with Form 8–A registration statements for listed debt securities.

DATES: *Effective Date:* The rule and amendments are effective December 7, 1994.

Compliance Date: However, any registrant or broker-dealer may choose to comply with the new rules at the time of publication in the **Federal Register**. Registrants with proxy statements or Forms 8–A pending with the Commission should see the transition provisions set forth in Section V.

FOR FURTHER INFORMATION CONTACT: With regard to the exemption from restrictions on borrowing, Beth A. Stekler, at (202) 942–0190, Branch of Exchange Regulation, Division of Market Regulation; with regard to questions concerning the definition of debt securities, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900; with regard to issues relating to the proxy rules or Form 8–A, Joseph P. Babits, at (202) 942–2910, Office of Disclosure Policy, Division of Corporation Finance; Securities and Exchange Commission (Mail Stops 5–1, 3–3 and 3–12, respectively), 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Under the Exchange Act,[1] the Commission is adopting new Rule 3a12–11[2] and revisions to Rules 12b–7,[3] 12d1–2,[4] and Form 8–A.[5]

I. Introduction

In June 1994, the Commission published for comment proposed new Exchange Act Rule 3a12–11 and certain revisions to current Exchange Act rules ("Proposing Release").[6] The proposals were designed to reduce existing regulatory distinctions between debt securities listed on a national securities exchange and those traded in the over-the-counter ("OTC") market by exempting listed debt securities from restrictions on borrowing[7] and proxy and information statement regulation.[8] The Commission also proposed to simplify registration procedures under the Exchange Act for listed debt securities. Finally, comment was solicited as to whether it would be advisable to extend reporting requirements to issuers of debt securities that are traded in the OTC market under certain circumstances where the issuer is not otherwise subject to periodic reporting requirements.

The Commission received 27 letters of comment from a variety of professional associations, securities firms, corporations and self-regulatory organizations.[9] Most commenters supported the proposed exemptive relief and the simplified Exchange Act registration procedures. In addition, most commenters supported, or agreed that consideration should be given to, the extension of periodic reporting requirements to debt issuers in certain circumstances. The issue of extending periodic reporting is still under consideration by the Commission; the proposed rule and amendments are being adopted as proposed, except for minor changes as discussed below.

II. New Exchange Act Rule 3a12–11 and Amendments to Exchange Act Rules

A. Background

Section 12 of the Exchange Act[10] requires all securities listed on a national securities exchange to be registered under the Exchange Act.[11] Registration subjects the securities, whether debt or equity, to a number of regulatory provisions, including restrictions on borrowing,[12] periodic reporting by the issuer,[13] and proxy and information statement regulation.[14] In contrast, debt securities traded in the OTC market are not required to be registered under the Exchange Act,[15] and, therefore, such securities are not subject to the restrictions on borrowing or proxy and information statement regulation. These regulatory distinctions may have unnecessarily and unintentionally affected the structure and development of the debt markets.

The New York Stock Exchange ("NYSE") has advised the Commission that the additional regulatory requirements imposed on listed debt securities create significant disincentives for issuers to list their debt on the national securities exchanges and urged that exemptive action be taken to eliminate this disparity. To address this disparate regulatory treatment between listed and OTC-traded debt, the Commission is adopting new Exchange Act Rule 3a12–11 to exempt listed debt securities from the borrowing restrictions and most of the proxy and information statement rules. Listed debt securities, however, will remain subject to the registration and reporting requirements of the Exchange Act. The Commission also is amending current Exchange Act rules in order to simplify the Exchange Act registration process by providing for the immediate effectiveness of Form 8–A registration statements pertaining to the listing of debt securities on a national securities exchange and eliminating the filing fee associated with the form.

B. Exemption from the Borrowing Restrictions of the Exchange Act

Under Section 8(a), a broker-dealer can pledge a listed security, other than an exempted security, only to a limited group of lenders: a member bank of the Federal Reserve System; a non-member bank that has filed with the Board of Governors of the Federal Reserve System ("Federal Reserve Board") an agreement to comply with those provisions of the federal securities and banking laws that apply to member banks;[16] or another broker-dealer if such a loan is permissible under the rules and regulations of the Federal Reserve Board.[17] There is, however, no comparable limitation on the available lenders for OTC securities. As a result, a broker-dealer can use bonds that are not listed on an exchange as collateral to secure financing from any lender.

The Commission proposed Rule 3a12–11(a) in response to concerns voiced by various market participants that Section 8(a) is overly restrictive and competitively unfair.[18] According to

[1] 15 U.S.C. 78a *et seq.*

[2] 17 CFR 240.3a12–11.

[3] 17 CFR 240.12b–7.

[4] 17 CFR 240.12d1–2.

[5] 17 CFR 249.208a.

[6] Release No. 34–34139 (June 1, 1994) [59 FR 29398].

[7] Section 8(a) of the Exchange Act [15 U.S.C. 78h(a)].

[8] Section 14(a), (b), and (c) of the Exchange Act [15 U.S.C. 78n(a), (b), and (c)].

[9] The comment letters as well as the comment summary prepared by the staff are available for inspection and copying at the Commission's Public Reference Room (*see* File No. S7–16–94).

[10] 15 U.S.C. 78*l*.

[11] Section 12(a) of the Exchange Act [15 U.S.C. 78*l*(a)] prevents any member, broker or dealer from effecting any transaction in any security listed on a national securities exchange unless the security is registered pursuant to Section 12(b) of the Exchange Act [15 U.S.C. 78*l*(b)].

[12] Section 8(a) of the Exchange Act.

[13] Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)].

[14] Sections 14 (a), (b) and (c) of the Exchange Act.

[15] See Section 12(g) of the Exchange Act [15 U.S.C. 78*l*(g)], which only requires registration of *equity* securities.

[16] Regulation U [12 CFR 221.1 *et seq.*] requires that a non-member bank file an agreement that conforms to the requirements of Section 8(a) prior to extending any credit secured by any nonexempt security registered on a national securities exchange to broker-dealers who are borrowing in the ordinary course of business. *See* 12 CFR 221.4(a).

[17] For example, Regulation T [12 CFR 220.1 *et seq.*] authorizes a broker-dealer to clear or finance transactions for a specialist's market functions account. *See* 12 CFR 220.12(b).

[18] *See, e.g.*, letter from Donald J. Solodar, Executive Vice President, Fixed Income, Options & Administration, NYSE, to Brandon Becker, Director, Division of Market Regulation, Securities and Exchange Commission, and Linda C. Quinn, Director, Division of Corporation Finance, Securities and Exchange Commission, dated July

Continued

these participants, broker-dealers' discretion in financing their positions is unduly constrained once a debt security is traded on an exchange. In addition, at least one national securities exchange was informed by its members that they may advise an issuer against listing bonds due to the restrictions in Section 8(a).[19] In the Proposing Release, the Commission questioned whether existing regulatory distinctions may have unnecessarily affected the structure and development of the corporate bond market, without any benefit to investors.

After careful consideration of the issues raised in the Proposing Release and in the comment letters, the Commission has concluded that differential treatment of listed and OTC debt securities for loan purposes is no longer warranted, given developments in the OTC market since Congress amended the Exchange Act in the 1960s,[20] the current structure of the bond market,[21] and the nature of debt financing. The Commission believes that it is appropriate to eliminate this disparity by exempting listed debt securities from the borrowing restrictions of Section 8(a).[22] Accordingly, Rule 3a12–11(a) will enable a broker-dealer to pledge listed debt securities, like debt securities traded exclusively in the OTC market, to any lender.

All 15 commenters that address the restrictions on borrowing, including staff of the Federal Reserve Board, support an exemption for listed debt securities. Several commenters state that Rule 3a12–11(a) will provide broker-dealers with greater flexibility and help them to obtain inventory financing on the most favorable terms. For instance, one commenter predicts that the new exemption will result in lower financing rates due to an increase in competition among sources of credit, such as corporations, insurance companies and other currently ineligible lenders.[23] Others note that broker-dealers will be able to enter into repurchase agreements and other arrangements with non-bank institutional investors.[24] Commenters also believe that Rule 3a12–11(a) will reduce the current disincentive for issuers to list their debt on a national securities exchange. For these reasons, commenters strongly support exempting listed debt securities from Section 8(a)'s restrictions on borrowing. Certain commenters, moreover, recommend that the potential benefits of the exemption be extended to all listed securities, including listed equity securities.

Finally, several commenters suggest that further action may be needed to eliminate the restriction in Regulation T that parallels the statutory restriction in Section 8(a).[25] Commenters recommend that the Commission work with the Federal Reserve Board to clarify this matter, and suggest modifications to the text of the proposed rule to resolve the uncertainty.[26]

The Commission agrees with the commenters that exempting listed debt securities from the Exchange Act's borrowing restrictions will eliminate an unwarranted regulatory disparity, with possible benefits to the corporate bond market. First, the Commission believes that Rule 3a12–11(a) should provide broker-dealers with flexibility in financing their inventory positions. Specifically, the new rule will enable a broker-dealer borrowing against a listed debt security to choose among prospective lenders based solely upon the terms of the credit they offer. This should facilitate, among other things, repurchase agreements with non-bank institutional investors. As a result, adoption of Rule 3a12–11(a) may reduce the cost of dealer operations and may encourage broker-dealers to take positions in listed debt securities, thereby adding depth and liquidity to the corporate bond market.

Second, the Commission finds that Rule 3a12–11(a) should eliminate one competitive barrier to the exchange-trading of debt securities. As noted in the comment letters, current Section 8(a), among other factors, may provide underwriters or investment bankers with an incentive to recommend that debt securities be traded in the OTC market, rather than listed on an exchange. The Commission believes that such an impact on the structure of the debt market is unwarranted. By equalizing the credit treatment of corporate bonds, adoption of Rule 3a12–11(a) may provide a greater opportunity for exchanges to compete with the OTC market for debt listings.

The Commission has concluded that the modifications suggested by the commenters to conform Regulations T and U with Rule 3a12–11(a) are not necessary. In this regard, staff of the Federal Reserve Board has confirmed that the section of Regulation T discussed by the commenters[27] and the section of Regulation U governing agreements by non-member banks[28] were adopted pursuant to Section 8(a).[29] Federal Reserve Board staff agrees with the Commission that consequently Rule 3a12–11(a), as proposed and as adopted,

19, 1993 ("NYSE letter"); letter from Marc E. Lackritz, President, Securities Industry Association ("SIA"), to William W. Wiles, Secretary, Federal Reserve Board, dated December 23, 1992 ("SIA letter").

[19] *See* NYSE letter, n. 18, above.

[20] *See* 1968 Amendments to the Securities Exchange Act of 1934, Pub. L. No. 90–437, 82 Stat. 452 (1968).

[21] Most secondary trading in debt securities (including listed debt securities) currently takes place in the OTC market; exchange trading of corporate bonds accounts for a relatively small percentage of the daily trading volume in such securities and is often in "odd-lot" size. United States Securities and Exchange Commission, Division of Market Regulation, *The Corporate Bond Markets: Structure, Pricing and Trading* 1, 13 (January 1992). Although these circumstances may change as a result of Rule 3a12–11(a), the Commission believes that, at this time, Section 8(a) places a competitive burden on exchange markets by subjecting them to more restrictive regulation than the primary market for the trading of debt securities, the OTC market.

[22] Section 8(a) specifically excludes exempted securities from the restrictions on the sources of credit available to broker-dealers borrowing against listed securities. Under Section 3(a)(12) of the Exchange Act [15 U.S.C. 78c(a)(12)], the term "exempted securities" includes such securities as the Commission may exempt from the operation of any one or more provisions of the Exchange Act.

[23] *See* letter from Laura L. Inman, Vice President and Senior Counsel, Debt Markets Group, Office of General Counsel, Merrill Lynch, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 17, 1994. Merrill Lynch also states that the permissible counterparties under Section 8(a) are not viable lenders, because broker-dealers are reluctant to disclose their inventory positions to competitors and because banks have higher financing rates than other kinds of lenders. *Id.*

[24] *See, e.g.*, letter from Goldman Sachs to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 12, 1994.

[25] Under Regulation T, a broker-dealer may not borrow in the ordinary course of business using as collateral any registered nonexempted security, except from a member bank of the Federal Reserve System; a non-member bank that has filed an agreement that conforms to the requirements of Section 8(a); or another broker-dealer if the loan is permissible under Regulation T. *See* 12 CFR 220.15(a). For purposes of Regulation T, "nonexempted security" means any security other than an exempted security as defined in Section 3(a)(12) of the Exchange Act. *See* 12 CFR 220.2(r). In addition, Regulation U requires that a non-member bank file an agreement conforming to the requirements of Section 8(a) before extending credit on any nonexempt security registered on an exchange. *See* 12 CFR 221.4(a).

[26] In particular, commenters suggest that the Commission should expressly designate listed debt securities as "exempted securities" for purposes of Section 8(a) and any rules thereunder. *See, e.g.*, letter from Anthony J. Leitner, Co-Chairman, Ad Hoc Committee on Regulation T, SIA, and Robert F. Price, Chairman, Federal Regulation Committee, SIA, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 17, 1994.

[27] As noted above, Section 220.15 of Regulation T parallels Section 8(a)'s restrictions on the sources of credit available to broker-dealers borrowing against listed securities. *See* n. 25, above, and accompanying text.

[28] Section 221.4 of Regulation U requires a non-member bank to file an agreement conforming to the requirements of Section 8(a). *See*, n. 16 and 25, above.

[29] *See* letter from Scott Holz, Senior Attorney, Division of Banking Supervision and Regulation, Federal Reserve Board, to Beth Stekler, Attorney, Division of Market Regulation, Securities and Exchange Commission, dated September 19, 1994.

will have the effect of exempting listed debt securities from those provisions of the Federal Reserve Board's rules.[30] Federal Reserve Board staff supports the Commission granting such an exemption. Listed debt securities will continue to be nonexempted securities for all other purposes under Regulations T and U.[31]

Further, the Commission has considered the commenters' suggestion that the exemption from Section 8(a) apply to all listed securities, debt and equity. The new rules and amendments being adopted today, however, were designed to achieve competitive balance for the corporate bond market. Consistent with that goal, the Commission proposed and, at this time, has decided to adopt a rule that is limited to debt securities, rather than significantly change the exemptive rule by broadening it to cover equity securities. Nevertheless, the treatment of listed equity securities for loan purposes may warrant further exploration by the Commission and other appropriate regulatory organizations.

With respect to the definition of the term "debt security" for purposes of new Rule 3a12–11, the Proposing Release solicited comment as to whether the term should include any security that is not an "equity security" as defined by the Exchange Act and the rules thereunder,[32] or whether the term should be more specifically defined.[33] Commenters supported the broader definition primarily because of the risk that certain innovative securities may not fit squarely within pre-conceived categories. Given this concern, as well as the desire of the Commission to simplify an issuer's determination as to whether a debt or equity security is at issue, new Rule 3a12–11 provides that the term "debt security" will include any security that is not an "equity security" as defined by the Exchange Act and the rules thereunder.[34]

The Proposing Release also solicited comment as to whether hybrid debt securities should be considered as debt or equity securities for purposes of new Rule 3a12–11. The Commission received limited comment. After further consideration, the Commission believes that no further clarification regarding hybrid securities is necessary; if a security is not an equity security as defined by the Exchange Act and the rules thereunder, then the security will be considered a "debt security" for purposes of Rule 3a12–11.[35]

C. Exemption from Compliance with the Proxy Rules

As discussed above, debt securities listed on a national securities exchange are subject to proxy regulation while debt securities traded in the OTC market, the principal trading market for debt securities,[36] are not. The disparate application of the proxy rules between listed debt securities and OTC-traded debt securities reflected the nature of the debt markets in the 1960s when Congress amended the Exchange Act;[37] this difference in regulatory treatment is cited by some as a significant disincentive for corporate issuers to list their debt securities on a national securities exchange.[38]

To eliminate the disparity, the Commission proposed Rule 3a12–11(b) to exempt debt securities listed on a national securities exchange from proxy regulation, but solicited comment as to whether the antifraud proscriptions[39] and the Exchange Act rules governing the transmission to beneficial owners of proxy and consent materials and information statements should be excluded from the proposed exemption.[40] The majority of commenters favored the proposed rule. With respect to listed debt securities, the proxy rules largely cover solicitations to amend the terms of an indenture contract.[41] Commenters who supported the exemption noted that debtholders often negotiate specific provisions governing the amendment of the indenture contract, and therefore, unlike shareholders, debtholders do not need the protection of the proxy rules.[42]

In addition to the protections supplied by the indenture contract and the Trust Indenture Act, debtholders will continue to be protected by the proxy rules' antifraud proscriptions and the Exchange Act rules that facilitate the transmission of materials to beneficial owners. The Commission has determined that any exemptive relief from the proxy rules should not encompass the antifraud proscriptions or the rules relating to the transmission of materials to beneficial owners. The antifraud proscriptions provide protection to investors without placing any undue burden upon the issuer. Further, the rules relating to the transmission of materials to beneficial owners not only provide protection to investors but also benefit the issuer by

[30] *Id.*

[31] Specifically, listed debt securities will continue to be nonexempted securities for purposes of Regulation T's margin requirements. Accordingly, a broker-dealer who extends credit secured by such collateral must comply with the applicable rules and regulations of the Federal Reserve Board.

[32] The term "equity security" is defined in Section 3(a)(11) [15 U.S.C. 78c(a)(11)] and Rule 3a11–1 [17 CFR 240.3a11–1] thereunder. Equity securities would include, among other items, stock or similar security, certificates of interest or participation in any profit sharing agreement, voting trust certificate or certificate of deposit for any equity security, limited partnership interest, any security that is convertible, with or without consideration, into an equity security or any warrant or right to subscribe or purchase an equity security.

[33] The Proposing Release provided an example of a definition that enumerated specific characteristics of securities that would be considered "debt securities" under the proposed rule.

[34] Exchange Act Rule 3a12–11(c).

[35] Specific questions regarding whether a security is a debt security for purposes of Rule 3a12–11 may be brought to the attention of the Division of Corporation Finance, Office of Chief Counsel at (202) 942–2900.

[36] The OTC market is the principal trading market for debt (*see* n. 21, above). Of the more than 13,000 publicly traded domestic corporate bond issues in 1989, fewer than 20% (2,135 on the NYSE and 280 on the American Stock Exchange ("AMEX")) were listed on the NYSE and AMEX. *See* Colloton, "Bondholder Communications—The Missing Link in High Yield Debt," Hill and Knowlton, Inc. at 17 (August 1990).

[37] In 1963, the Commission submitted a report to Congress that set forth its recommendations as to the scope of regulations needed for the OTC market. *See, Report of Special Study of Securities Markets,* ("1963 Special Study") U.S. Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. pt. 3, 34 (1963). These recommendations led to the adoption of Section 12(g) in 1964. The Commission concluded that proxy regulation should not be required with respect to debt securities since Section 14 was designed to protect shareholders and the solicitation of proxies was "rarely [a] problem[ ] related to debt securities and, then, most probably in insolvency cases where other protections are available." *Id. See also* Section I.C of Release No. 34–34139.

[38] *See, e.g.,* letter from Jeffrey S. Werner, Senior Vice President, General Electric Capital Corporation to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 5, 1994 ("GE Capital letter").

[39] Exchange Act Rules 14a-9 [17 CFR 240.14a-9] and 14c-6 [17 CFR 240.14c-6].

[40] Exchange Act Rules 14a-13, [17 CFR 240.14a-13], 14b-1 [17 CFR 240.14b-1], 14b-2 [17 CFR 240.14b-2] and 14c-7 [17 CFR 240.14c-7]. All terms used in these rules have the same meanings as in the Exchange Act and Exchange Act Rules 14a-1 [17 CFR 240.14a-1] and 14c-1 [17 CFR 240.14c-1]. Additionally, the exemption afforded by Rule 14a-2(a) [17 CFR 240.14a-2(a)] will continue to be available.

[41] Solicitations of debtholders are infrequent. For example, between 1990 and 1993, 18 have occurred with respect to NYSE-listed issuers. *See* letter from Fred Siesel of NYSE to David Sirignano of the Division of Corporation Finance dated May 12, 1994.

[42] *See* letter from John F. Olson, Chair, Committee on Federal Regulation of Securities, American Bar Association ("ABA"); John J. Huber, Chair, Subcommittee on 1933 Act, ABA; and Richard E. Gutman, Chair, Subcommittee on Reporting Companies under the 1934 Act, ABA, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 4, 1994 ("ABA letter"). *See also* letters from Karl R. Barnickol, Chairman of Securities Law Committee, American Society of Corporate Secretaries, Inc. to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated July 26, 1994; Earle Mauldin, Chief Financial Officer, BellSouth Corporation to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 4, 1994; GE Capital letter, n. 38, above.

facilitating its ability to communicate directly with its debtholders. Accordingly, new Rule 3a12–11(b) will exempt exchange-listed debt securities[43] from proxy regulation, except that the antifraud proscriptions and the rules adopted under the Exchange Act to facilitate the transmission of materials to beneficial owners will continue to apply. The foregoing provisions, coupled with the issuer's reporting obligation under the Exchange Act, should ensure that investors remain protected.

The Proposing Release solicited comment as to whether the application of the proxy rules was part of the expectations of the parties negotiating the indenture contract, or of investors purchasing a listed debt security, and if so, whether the proxy rule exemption should be applied prospectively. Only one commenter addressed the issue.[44] That commenter believed that there is no need for a prospective application of the exemption since debtholders do not normally expect the proxy rules to apply. Since the Commission desires to eliminate unnecessary regulatory disparity as expeditiously as possible and given the other protections afforded debtholders as discussed above, the proxy rule exemption is not limited to issues of debt offered subsequent to the adoption of the exemption.

D. Automatic Effectiveness of Form 8–A and Elimination of Filing Fee

The Commission also is adopting amendments to Rule 12d1–2 and Form 8–A to reduce or eliminate some of the procedural costs of listing debt on a national securities exchange.[45]

Commenters unanimously supported the proposed automatic effectiveness of Forms 8–A and the elimination of the associated filing fee.[46]

All Forms 8–A, including amendments, pertaining to the registration of a class of debt securities to be listed on a national securities exchange will be automatically effective if certification by the national securities exchange has been received by the Commission on or before the filing of the form.[47] However, where a Form 8–A is registering a class of debt securities and securities from that class are being concurrently registered under the Securities Act, the Form 8–A will not automatically become effective upon filing, so that the debt securities will not become subject to any obligations under the Exchange Act prior to the related Securities Act registration statement being declared effective. Instead, as proposed, where there is a concurrent Securities Act registration statement pending, the Form 8–A will become effective simultaneously with the effectiveness of the Securities Act registration statement. Acceleration requests no longer will be needed for either of these categories of Form 8–A.[48]

In addition, the Commission is amending Rule 12b–7 to eliminate the $250 filing fee for registering a class of debt securities on Form 8–A.[49] Form 8–A has been revised to add two new boxes, one of which the issuer would check to signify it is a debt registration requiring no fee and that the Form 8–A: (1) Is to be effective automatically upon filing, as no debt securities of the class being registered on the form are being registered concurrently under the Securities Act; or (2) is to be effective simultaneously with the effectiveness of a related Securities Act registration statement. In order to receive automatic or concurrent effectiveness, the appropriate box must be checked.[50]

III. Cost-Benefit Analysis

No empirical data was submitted in response to the Commission's invitation to provide information on the costs and benefits of the proposed new Exchange Act rule and Exchange Act rule revisions. The rule and amendments should decrease the net costs to investors associated with listing debt securities on a national securities exchange, without materially diminishing the benefits to investors.

Currently, an issuer is not required to register debt securities under the Exchange Act in order for those securities to be traded in the OTC market. Consequently, OTC-traded debt securities are not subject to either the restrictions on borrowing or proxy regulation. New Rule 3a12–11 is designed to eliminate the disparity

[43] The term "debt securities" will be defined in the same manner as in the exemption from the restrictions on borrowing. *See* Exchange Act Rule 3a12–11(c).

[44] *See* ABA letter, n. 42, above.

[45] On June 1, 1994, the Commission also made practical modifications to filing procedures. *See* Section I.D of Release No. 34–34139. The Division of Corporation Finance will accept requests from national securities exchanges that wish to file a combined Form 8–A/Listing Application with the Commission on behalf of an issuer listing debt securities on their exchange. Any national securities exchange that is interested in filing a combined Form 8–A/Listing Application should have its representative contact Joseph P. Babits at (202) 942–2910.

A national securities exchange using such a procedure may wish to make Form 8–A filings with the Commission in paper, whether or not the registrant is subject to mandated electronic filing via the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR). Accordingly, the Division of Corporation Finance will consider requests for a continuing hardship exemption pursuant to Rule 202 of Regulation S–T [17 CFR 232.202] from any national securities exchange filing Forms 8–A on behalf of electronic filers. Continuing hardship exemptions will be available only through December 31, 1996.

National securities exchanges that intend to use a combined Form 8–A/Listing Application that will become effective upon filing must confirm that the combined Form has been in fact filed with the Commission prior to the commencement of trading in the class of securities. The issuer, however, may choose to file the Form 8–A itself. Regardless of whether the issuer or the national securities exchange files the Form 8–A/Listing Application, the issuer is solely responsible for the filing and its contents.

[46] Several commenters, while supporting these proposals, stated that the Commission should go further and not require Section 12 registration for issuers of debt securities subject to the reporting requirement of Section 13(a) of the Exchange Act. *See, e.g.*, letter from Richard T. Chase, Senior Vice President, Chief Counsel, Lehman Brothers to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated September 8, 1994.

[47] If an issuer elects to file the Form 8–A (or Form 8–A/Listing Application) itself, it must ensure that the Commission has received certification from the exchange on or before the date of filing the Form if automatic effectiveness is requested, or, if concurrent effectiveness is requested, on or before the date the Securities Act registration statement has been declared effective. An issuer may contact the Office of Quality Control at (202) 942–8970 (ext. 4475) to verify that certification has been received by the Commission.

If multiple debt issues are being registered on a single Form 8–A, certification for each issue must be received by the Commission prior to effectiveness. Where a Form 8–A relates to debt securities to be listed on multiple national securities exchanges (*e.g.*, the NYSE and the Boston Stock Exchange), then certifications must be received by the Commission from each exchange prior to effectiveness.

Forms 8–A that register both debt and equity securities are not encompassed by the amendments.

[48] Similarly, no effectiveness orders will be issued for Forms 8–A, as is the case with other registration statements that are effective automatically (*e.g.*, Form S–8 [17 CFR 239.16b]).

[49] Given the de minimis nature of the filing fee, it is of little significance in an issuer's decision to list securities. However, its elimination is consistent with the Commission's goal of eliminating regulatory disparity between listed and unlisted debt securities where not necessary for the protection of investors. The NYSE requires a listing fee for debt securities of $50 per million and minimum of $2,500 for new issues and $25 per million and minimum of $1,250 for issue outstanding one year or more. The fee does not apply if the company or its affiliate already has a class of equity securities listed on the NYSE.

[50] Registrants that are mandated electronic filers registering debt securities on Form 8–A should file in paper format until the necessary form types are available through the EDGAR system. The necessary form types are expected to be available with the release of the EDGARLink software version 4.10 in January 1995. Notice will be provided in the SEC Digest and the **Federal Register** and on the EDGAR Bulletin Board when the new EDGAR form types for Form 8–A are available. When available, registrants will use one of three new EDGAR form types: 8A12BEF (Form 8–A and amendments to Form 8–A registering debt securities that will be automatically effective upon filing), 8A12BT (Form 8–A registering debt securities that will be effective contemporaneously with the effectiveness of an associated Securities Act registration statement), or 8A12BT/A (amendment to Form 8–A registering debt securities that will be effective contemporaneously with the effectiveness of an associated Securities Act registration statement).

between exchange-listed debt securities and OTC-traded debt securities by exempting listed debt securities from the restrictions on borrowing and proxy regulation.

The amendments to the Exchange Act rules are expected to reduce or eliminate some of the procedural costs of listing debt on a national securities exchange. It is anticipated that the costs to investors associated with this new rule and amendments will be minimal.

IV. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 604 for Rule 3a12–11 and amendments to Rule 12b–7, 12d1–2, and Form 8–A. The analysis notes that the rule and amendments are expected to reduce regulatory costs for small entities.

As discussed more fully in the analysis, the new rule and amendments will affect persons that are small entities, as defined by the Commission's rules. The exemptions provided by Rule 3a12–11 and revisions to Rules 12b–7, 12d1–2, and Form 8–A are expected to decrease the compliance burdens of small entities.

A copy of the analysis may be obtained by contacting Joseph P. Babits, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

V. Effective Date and Transition Provisions

The rule and amendments are effective 30 days after publication in the **Federal Register**, in accordance with the Administrative Procedures Act; however, any registrant or broker-dealer may choose to comply with the new rules at any time after publication in the **Federal Register**. To provide for a smooth transition for use of the new rule and amendments, the following transition provisions will be permitted. First, registrants that have proxy statements relating to a solicitation of debtholders pending with the Commission should contact the registrant's Branch Chief in the Division of Corporation Finance if they intend to rely on the proxy exemption afforded by the rule, so that the staff may stop processing the filing. Second, issuers that have Form 8–A registration statements for listed debt securities pending with the Commission should continue to follow the current procedures regarding acceleration of effectiveness of Forms 8–A. As is currently the case, those issuers or the national securities exchange on which the debt securities are to be listed must provide the staff with an acceleration request prior to the desired effective date of the Form 8–A. The staff will then notify the issuer and the national securities exchange once effectiveness has been granted.

VI. Statutory Basis for Rules

New Rule 3a12–11 and amendments are being made pursuant to Exchange Act Sections 3(a)(12),[51] 9,[52] 10,[53] 12,[54] 14,[55] and 23,[56] as amended.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and record keeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. By adding § 240.3a12–11 to read as follows:

§ 240.3a12–11 Exemption from Sections 8(a), 14(a), 14(b), and 14(c) for debt securities listed on a national securities exchange.

(a) Debt securities that are listed for trading on a national securities exchange shall be exempt from the restrictions on borrowing of Section 8(a) of the Act (15 U.S.C. 78h(a)).

(b) Debt securities registered pursuant to the provisions of Section 12(b) of the Act (15 U.S.C. 78*l*(b)) shall be exempt from Sections 14(a), 14(b), and 14(c) of the Act (15 U.S.C. 78n(a), (b), and (c)), *except that* §§ 240.14a-1, 240.14a-2(a), 240.14a-9, 240.14a-13, 240.14b-1, 240.14b-2, 240.14c-1, 240.14c-6 and 240.14c-7 shall continue to apply.

(c) For purposes of this section, *debt securities* is defined to mean any securities that are not "equity securities" as defined in Section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) and § 240.3a11–1 thereunder.

3. By adding a sentence to the end of § 240.12b-7 to read as follows:

§ 240.12b-7 Filing fee.

* * * No fee, however, shall be paid to the Commission for the registration of debt securities, as defined in § 240.3a12–11(c), on Form 8–A (17 CFR 249.208a) pursuant to Section 12(b) of the Act (15 U.S.C. 78*l*(b)).

4. By revising the section heading, designating the existing text as paragraph (a), and adding paragraph (b) to § 240.12d1–2 to read as follows:

§ 240.12d1–2 Effectiveness of registration.

(a) * * *

(b) A registration statement on Form 8–A (17 CFR 249.208a) that only pertains to the listing of a class or classes of debt securities, as defined in § 240.3a12–11(c), on a national securities exchange for which certification has been received by the Commission shall become effective upon filing with the Commission, in the case of a class of debt securities not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"); and otherwise, upon the effectiveness of a concurrent Securities Act registration statement to which the debt securities relate.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C 78a, *et seq.*, unless otherwise noted;

* * * * *

6. By amending § 249.208a by adding paragraph (c) to read as follows:

§ 249.208a Form 8–A, for registration of certain classes of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

* * * * *

(c) If this form is used *only* for the registration of a class of debt securities as defined in § 240.3a12–11(c) of this chapter and certification from the national securities exchange has been received by the Commission, it shall become effective either:

(1) Upon filing with the Commission, in the case of a class of debt securities not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"); or

(2) Upon the effectiveness of a concurrent Securities Act registration statement to which the debt securities relate.

7. By amending Form 8–A (referenced in § 249.208a) by adding two check

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[51] 15 U.S.C. 78c(a)(12).
[52] 15 U.S.C. 78i.
[53] 15 U.S.C. 78j.
[54] 15 U.S.C. 78*l*.
[55] 15 U.S.C. 78n.
[56] 15 U.S.C. 78w.

boxes to the cover page immediately before "Securities to be registered pursuant to Section 12(g) of the Act," and by adding paragraph (c) to General Instruction A to read as follows:

Note: The text of Form 8–A does not and the amendments will not appear in the Code of Federal Regulations.

Form 8–A—For Registration of Certain Classes of Securities Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

If this Form relates to the registration of a class of debt securities and is effective upon filing pursuant to General Instruction A.(c)(1), please check the following box. [ ]

If this Form relates to the registration of a class of debt securities and is to become effective simultaneously with the effectiveness of a concurrent registration statement under the Securities Act of 1933 pursuant to General Instruction A.(c)(2), please check the following box. [ ]

* * * * *

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 8–A

* * * * *

(c) If this form is used *only* for the registration of a class of debt securities as defined in Rule 3a12–11(c) (17 CFR 240.3a12–11(c)) and certification from the national securities exchange has been received by the Commission, it shall become effective:

(1) upon filing with the Commission, in the case of a class of debt securities not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 78a *et seq.*) ("Securities Act"); or

(2) simultaneously with the effectiveness of a concurrent Securities Act registration statement to which the debt securities relate. *See* Rule 12d1–2(b) (17 CFR 240.12d1–2(b)).

By the Commission.

Dated: November 1, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27445 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy has revised its Privacy Act Instruction. This final rule re-establishes the Navy's Privacy Program and incorporates the changes made to the revised Instruction.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (703) 697–1459 or DSN 227–1459.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Department of the Navy previously published its proposed rule on June 1, 1994, at 59 FR 28304. No comments were received that resulted in a contrary determination, therefore, the Department of the Navy is publishing this final rule.

List of Subjects in 32 CFR Part 701

Privacy.

Accordingly, 32 CFR part 701, subparts F and G are revised as follows:

PART 701 - AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

Subpart F - Department of the Navy Privacy Act Program

Subpart G - Privacy Act Exemptions

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

Subpart F - Department of the Navy Privacy Act Program

§ 701.100 Purpose.

Subparts F and G of this part implement the Privacy Act (5 U.S.C. 552a), and DoD Directive 5400.11 [1], and DoD 5400.11–R [2], (see 32 CFR part 310) and provides Department of the Navy policies and procedures for:

(a) Governing the collection, safeguarding, maintenance, use, access, amendment, and dissemination of personal information kept by Department of the Navy in systems of records;

(b) Notifying individuals if any systems of records contain a record pertaining to them;

(c) Verifying the identity of individuals who request their records before the records are made available to them;

(d) Notifying the public of the existence and character of each system of records.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 701.100.

(e) Exempting systems of records from certain requirements of the Privacy Act; and

(f) Governing the Privacy Act rules of conduct for Department of the Navy personnel, who will be subject to criminal penalties for noncompliance with 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988.

§ 701.101 Applicability.

This subpart and subpart G of this part apply throughout the Department of the Navy. It is also applicable to contractors by contract or other legally binding action, whenever a Department of the Navy contract provides for the operation of a system of records or portion of a system of records to accomplish a Department of the Navy function. For the purposes of any criminal liabilities adjudged, any contractor or any employee of such contractor is considered to be an employee of Department of the Navy. In case of a conflict, this subpart and subpart G of this part take precedence over any existing Department of the Navy directive that deals with the personal privacy and rights of individuals regarding their personal records, except for disclosure of personal information required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act and implemented by Secretary of the Navy Instruction 5720.42E[3], "Department of the Navy Freedom of Information Act Program."

§ 701.102 Definitions.

For the purposes of this subpart and subpart G of this part, the following meanings apply.

(a) *Access.* The review or copying of a record or parts thereof contained in a system of records by any individual.

(b) *Agency.* For the purposes of disclosing records subject to the Privacy Act between or among Department of Defense (DoD) components, the Department of Defense is considered a single agency. For all other purposes, Department of the Navy is considered an agency within the meaning of Privacy Act.

(c) *Confidential source.* A person or organization who has furnished information to the Federal Government either under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

[3] Copies available from Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

(d) *Defense Data Integrity Board.* Consists of members of the Defense Privacy Board, as outlined in DoD Directive 5400.11 and, in addition, the DoD Inspector General or the designee, when convened to oversee, coordinate and approve or disapprove all DoD component computer matching covered by the Privacy Act.

(e) *Disclosure.* The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review), to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

(f) *Federal personnel.* Officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals or survivors thereof, entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(g) *Individual.* A living citizen of the United States or alien lawfully admitted to the U.S. for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. No rights are vested in the representative of a deceased person under this instruction and the term "individual" does not embrace an individual acting in a non-personal capacity (for example, sole proprietorship or partnership).

(h) *Individual access.* Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

(i) *Maintain.* Includes maintain, collect, use, or disseminate.

(j) *Member of the public.* Any individual or party acting in a private capacity.

(k) *Minor.* Under this subpart and subpart G of this part, a minor is an individual under 18 years of age, who is not a member of the U.S. Navy or Marine Corps, nor married.

(l) *Official use.* Under this subpart and subpart G of this part, this term is used when Department of the Navy officials and employees have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties.

(m) *Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

(n) *Privacy Act (PA) request.* A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

(o) *Record.* Any item, collection, or grouping of information about an individual that is maintained by a naval activity including, but not limited to, the individual's education, financial transactions, and medical, criminal, or employment history, and that contains the individual's name or other identifying particulars assigned to the individual, such as a finger or voice print or a photograph.

(p) *Review authority.* An official charged with the responsibility to rule on administrative appeals of initial denials of requests for notification, access, or amendment of records. The Secretary of the Navy has delegated his review authority to the Assistant Secretary of the Navy (Manpower and Reserve Affairs (ASN(M&RA)), the General Counsel (OGC), and the Judge Advocate General (NJAG). Additionally, the Office of Personnel Management (OPM) is the review authority for civilian official personnel folders or records contained in any other OPM record.

(q) *Risk assessment.* An analysis which considers information sensitivity, vulnerability, and cost to a computer facility or word processing center in safeguarding personal information processed or stored in the facility or center.

(r) *Routine use.* Disclosure of a record outside the Department of Defense for a purpose that is compatible with the purpose for which the record was collected and maintained by the Department of Defense. The routine use must have been included in the notice for the system of records published in the **Federal Register**.

(s) *Statistical record.* A record maintained only for statistical research, or reporting purposes, and not used in whole or in part in making any determination about a specific individual.

(t) *System manager.* An official who has overall responsibility for a system of records. He or she may serve at any level in Department of the Navy. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (i.e., for local records, at the local activity).

(u) *System of records.* A group of records under the control of a Department of the Navy activity from

which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the **Federal Register** and are also published in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211 [4].

(v) *Word processing equipment.* Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programmable software, hard wiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device.

(w) *Word processing system.* A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written communications into a form suitable to the originator. The results are written or graphic presentations intended to communicate verbally or visually with another individual.

(x) *Working day.* All days excluding Saturday, Sunday, and legal holidays.

§ 701.103 Policy.

It is the policy of Department of the Navy to:

(a) Ensure that all its personnel comply fully with 5 U.S.C. 552a, DoD Directive 5400.11 and DoD 5400.11–R, to protect individuals from unwarranted invasions of privacy. Individuals covered by this protection are living citizens of the U.S. or aliens lawfully admitted for permanent residence. A legal guardian of an individual or parent of a minor when acting on the individual's or minor's behalf, has the same rights as the individual or minor. (A member of the Armed Forces is not a minor for the purposes of this subpart and subpart G of this part).

(b) Collect, maintain, and use only that personal information needed to support a Navy function or program as authorized by law or E.O., and disclose this information only as authorized by 5 U.S.C. 552a and this subpart and subpart G of this part. In assessing need, consideration shall be given to alternatives, such as use of information not individually identifiable or use of sampling of certain data for certain individuals only. Additionally, consideration is to be given to the length of time information is needed, and the cost of maintaining the information compared to the risks and adverse consequences of not maintaining the information.

(c) Keep only personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(d) Let individuals have access to, and obtain copies of, all or portions of their records, subject to exemption procedures authorized by law and this subpart and subpart G of this part.

(e) Let individuals request amendment of their records when discrepancies proven to be erroneous, untimely, incomplete, or irrelevant are noted.

(f) Let individuals request an administrative review of decisions that deny them access, or refuse to amend their records.

(g) Ensure that adequate safeguards are enforced to prevent misuse, unauthorized disclosure, alteration, or destruction of personal information in records.

(h) Maintain no records describing how an individual exercises his or her rights guaranteed by the First Amendment (freedom of religion, political beliefs, speech, and press; peaceful assemblage; and petition for redress of grievances), unless they are:

(1) Expressly authorized by statute;

(2) Authorized by the individual;

(3) Within the scope of an authorized law enforcement activity; or

(4) For the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains. This should not be construed, however, as restricting or excluding solicitation of information which the individual is willing to have in his or her record concerning religious preference, particularly that required in emergency situations.

(5) Maintain only systems of records which have been published in the **Federal Register**, in accordance with periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211 and § 701.105. These OPNAVNOTEs 5211 provide a listing of all Department of the Navy Privacy Act systems of records and identify the Office of Personnel Management (OPM) government-wide systems containing information on Department of the Navy civilian employees, even though technically, Department of the Navy does not have cognizance over them. A Privacy Act systems notice outlines what kinds of information may be collected and maintained by naval activities. When collecting/maintaining information in a Privacy Act system of records, review the systems notice to ensure activity compliance is within the scope of the system. If you determine the systems notice does not meet your needs, contact the systems manager or Chief of Naval Operations (N09B30) with your concerns so that amendment of the system may be considered.

§ 701.104 Responsibility and authority.

(a) *Chief of Naval Operations (CNO).* CNO is designated as the official responsible for administering and supervising the execution of 5 U.S.C. 552a, DoD Directive 5400.11, and DoD 5400.11–R. CNO has designated the Assistant Vice Chief of Naval Operations (N09B30) as principal Privacy Act Coordinator for the Department of the Navy to:

(1) Set Department of the Navy policy on the provisions of the Privacy Act.

(2) Serve as principal advisor on all Privacy Act matters.

(3) Oversee the administration of the Privacy Act program, which includes preparing the Department of the Navy Privacy Act report for submission to Congress.

(4) Develop Navy-wide Privacy Act training program and serve as training-oversight manager.

(5) Conduct staff assistance visits within Department of the Navy to review compliance with 5 U.S.C. 552a and this subpart and subpart G of this part.

(6) Coordinate and prepare responses for Privacy Act requests received for Office of the Secretary of the Navy records.

(b) *Commandant of the Marine Corps (CMC).* CMC is responsible for administering and supervising the execution of this subpart and subpart G of this part within the Marine Corps. The Commandant has designated the Director, Manpower Management Information Systems Division (HQMC (Code MI)) as the Privacy Act coordinator for Headquarters, U.S. Marine Corps.

(c) *Privacy Act Coordinator.* Each addressee is responsible for implementing and administering a Privacy Act program under this subpart and subpart G of this part. Each addressee shall designate a Privacy Act Coordinator to:

(1) Serve as principal point of contact on Privacy Act matters.

(2) Provide training for activity/command personnel on the provisions of 5 U.S.C. 552a and this subpart and subpart G of this part.

(3) Issue implementing instruction which designates the activity's Privacy Act Coordinator, Privacy Act records disposition, Privacy Act processing

[4] See footnote 3 to § 701.101.

procedures, identification of Privacy Act systems of records under their cognizance, and training aids for those personnel involved with systems of records.

(4) Review internal directives, practices, and procedures, including those having Privacy Act implications and where Privacy Act Statements (PASs) are needed.

(5) Compile input and submit consolidated Privacy Act report to Echelon 2 Privacy Act Coordinator, who, in turn, will provide consolidated report to CNO (N09B30).

(6) Maintain liaison with records management officials (i.e., maintenance and disposal procedures and standards, forms, and reports), as appropriate.

(7) Provide guidance on handling Privacy Act requests and scope of Privacy Act exemptions.

(8) Conduct staff assistance visits within command and lower echelon commands to ensure compliance with the Privacy Act.

(9) Echelon 2 Privacy Act Coordinators shall provide CNO (N09B30) with a complete listing of all Privacy Act Coordinators under their jurisdiction. Such information should include activity name and address, office code, name of Privacy Act Coordinator, commercial and DSN telephone number, and FAX number, if applicable.

(d) *Release authority.* Officials having cognizance over the requested subject matter are authorized to respond to requests for notification, access, and/or amendment of records. These officials could also be systems managers (see § 701.104(g)).

(e) *Denial authority.* Within the Department of the Navy, the following chief officials, their respective vice commanders, deputies, principal assistants, and those officials specifically designated by the chief official are authorized to deny requests, either in whole or in part, for notification, access and amendment, made under this subpart and subpart G of this part, when the records relate to matters within their respective areas of responsibility or chain of command:

(1) *Department of the Navy.* Civilian Executive Assistants; CNO; CMC; Chief of Naval Personnel; Commanders of the Naval Systems Commands, Office of Naval Intelligence, Naval Security Group Command, Naval Imaging Command, and Naval Computer and Telecommunications Command; Chief, Bureau of Medicine and Surgery; Auditor General of the Navy; Naval Inspector General; Director, Office of Civilian Personnel Management; Chief of Naval Education and Training; Commander, Naval Reserve Force; Chief of Naval Research; Commander, Naval Oceanography Command; heads of Department of the Navy Staff Offices, Boards, and Councils; Flag Officers and General Officers. NJAG and his Deputy, and OGC and his Deputies are excluded from this grant of authorization. While NJAG and OGC are not denial authorities, they are authorized to further delegate the authority conferred here to other senior officers/officials within NJAG and OGC.

(2) *For the shore establishment.*

(i) All officers authorized under Article 22, Uniform Code of Military Justice (UCMJ) or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C)[5], to convene general courts-martial.

(ii) Commander, Naval Investigative Service Command.

(iii) Deputy Commander, Naval Legal Service Command.

(3) *In the Operating Forces.* All officers authorized by Article 22, Uniform Code of Military Justice (UCMJ), or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C), to convene general courts-martial.

(f) *Review authority.* (1) The Assistant Secretary of the Navy (Manpower and Reserve Affairs), is the Secretary's designee, and shall act upon requests for administrative review of initial denials of requests for amendment of records related to fitness reports and performance evaluations of military personnel (see § 701.111(c)(3)).

(2) The Judge Advocate General and General Counsel, as the Secretary's designees, shall act upon requests for administrative review of initial denials of records for notification, access, or amendment of records, as set forth in § 701.111(c)(2) and (4).

(3) The authority of the Secretary of the Navy (SECNAV), as the head of an agency, to request records subject to the Privacy Act from an agency external to the Department of Defense for civil or criminal law enforcement purposes, under subsection (b)(7) of 5 U.S.C. 552a, is delegated to the Commandant of the Marine Corps, the Director of Naval Intelligence, the Judge Advocate General, and the General Counsel.

(g) *Systems manager.* Systems managers, as designated in Department of the Navy's compilation of systems notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211[6], "Current Privacy Act Issuances") shall:

(1) Ensure the system has been published in the **Federal Register** and that any additions or significant changes are submitted to CNO (N09B30) for approval and publication. The systems of records should be maintained in accordance with the systems notices as published in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances."

(2) Maintain accountability records of disclosures.

(h) *Department of the Navy employees.* Each employee of the Department of the Navy has certain responsibilities for safeguarding the rights of others. These include:

(1) Not disclosing any information contained in a system of records by any means of communication to any person or agency, except as authorized by this subpart and subpart G of this part.

(2) Not maintaining unpublished official files which would fall under the provisions of 5 U.S.C. 552a.

(3) Safeguarding the privacy of individuals and confidentiality of personal information contained in a system of records.

§ 701.105 Systems of records.

To be subject to this subpart and subpart G of this part, a "system of records" must consist of "records" that are retrieved by the name, or some other personal identifier, of an individual and be under the control of Department of the Navy.

(a) *Retrieval practices.* (1) Records in a group of records that are not retrieved by personal identifiers are not covered by this subpart and subpart G of this part, even if the records contain information about individuals and are under the control of Department of the Navy. The records must be retrieved by personal identifiers to become a system of records.

(2) If records previously not retrieved by personal identifiers are rearranged so they are retrieved by personal identifiers, a new system notice must be submitted in accordance with § 701.107.

(3) If records in a system of records are rearranged so retrieval is no longer by personal identifiers, the records are no longer subject to this subpart and subpart G of this part and the records system notice should be deleted in accordance with § 701.107.

(b) *Recordkeeping standards.* A record maintained in a system of records subject to this subpart and subpart G of this part must meet the following criteria:

[5] Copies available from the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400.

[6] See footnote 3 to § 701.101.

[6] See footnote 3 to § 701.101.

(1) Be accurate. All information in the record must be factually correct.

(2) Be relevant. All information contained in the record must be related to the individual who is the record subject and also must be related to a lawful purpose or mission of the Department of the Navy activity maintaining the record.

(3) Be timely. All information in the record must be reviewed periodically to ensure that it has not changed due to time or later events.

(4) Be complete. It must be able to stand alone in accomplishing the purpose for which it is maintained.

(5) Be necessary. All information in the record must be needed to accomplish a Department of the Navy mission or purpose established by Federal Law or E.O. of the President.

(c) *Authority to establish systems of records.* Identify the specific Federal statute or E.O. of the President that authorizes maintaining each system of records. When a naval activity uses its "internal housekeeping" statute, i.e., 5 U.S.C. 301, Departmental Regulations, the naval instruction that implements the statute should also be identified. A statute or E.O. authorizing a system of records does not negate the responsibility to ensure the information in the system of records is relevant and necessary.

(d) *Exercise of First Amendment rights.* (1) Do not maintain any records describing how an individual exercises rights guaranteed by the First Amendment of the U.S. Constitution unless expressly authorized by Federal law; the individual; or pertinent to and within the scope of an authorized law enforcement activity.

(2) First amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(e) *System manager's evaluations and reviews.* (1) Evaluate each new system of records. Before establishing a system of records, evaluate the information to be included and consider the following:

(i) The relationship of each item of information to be collected and retained to the purpose for which the system is maintained (all information must be relevant to the purpose);

(ii) The specific impact on the purpose or mission if each category of information is not collected (all information must be necessary to accomplish a lawful purpose or mission.);

(iii) The ability to meet the informational needs without using personal identifiers (will anonymous statistical records meet the needs?);

(iv) The length of time each item of information must be kept;

(v) The methods of disposal;

(vi) The cost of maintaining the information; and

(vii) Whether a system already exists that serves the purpose of the new system.

(2) Evaluate and review all existing systems of records.

(i) When an alteration or amendment of an existing system is prepared pursuant to § 701.107(b) and (c), do the evaluation described in § 701.105(e).

(ii) Conduct the following reviews annually and be prepared to report, in accordance with § 701.104(c)(8), the results and corrective actions taken to resolve problems uncovered.

(A) Training practices to ensure all personnel are familiar with the requirements of 5 U.S.C. 552a, and DoD Directive 5400.11, "DoD Privacy Program", this subpart and subpart G of this part, and any special needs their specific jobs entail.

(B) Recordkeeping and disposal practices to ensure compliance with this subpart and subpart G of this part.

(C) Ongoing computer matching programs in which records from the system have been matched with non-DoD records to ensure that the requirements of § 701.115 have been met.

(D) Actions of Department of the Navy personnel that resulted in either Department of the Navy being found civilly liable or a person being found criminally liable under 5 U.S.C. 552a, to determine the extent of the problem and find the most effective way of preventing the problem from occurring in the future.

(E) Each system of records notice to ensure it accurately describes the system. Where major changes are needed, alter the system notice in accordance with § 701.107(b). If minor changes are needed, amend the system notice pursuant to § 701.107(c).

(iii) Every even-numbered year, review a random sample of Department of the Navy contracts that provide for the operation of a system of records to accomplish a Department of the Navy function, to ensure the wording of each contract complies with the provisions of 5 U.S.C. 552a and § 701.105(h).

(iv) Every three years, beginning in 1992, review the routine use disclosures associated with each system of records to ensure the recipient's use of the records continues to be compatible with the purpose for which the information was originally collected.

(v) Every three years, beginning in 1993, review each system of records for which exemption rules have been established to determine whether each exemption is still needed.

(vi) When directed, send the reports through proper channels to the CNO (N09B30).

(f) *Discontinued information requirements.* (1) Immediately stop collecting any category or item of information about individuals that is no longer justified, and when feasible, remove the information from existing records.

(2) Do not destroy records that must be kept in accordance with retention and disposal requirements established under SECNAVINST 5212.5[7], "Disposal of Navy and Marine Corps Records."

(g) *Review records before disclosing outside the Federal government.* Before disclosing a record from a system of records to anyone outside the Federal government, take reasonable steps to ensure the record which is being disclosed is accurate, relevant, timely, and complete for the purposes it is being maintained.

(h) *Federal government contractors.* (1) Applicability to Federal government contractors.

(i) When a naval activity contracts for the operation of a system of records to accomplish its function, the activity must ensure compliance with this subpart and subpart G of this part and 5 U.S.C. 552a. For the purposes of the criminal penalties described in 5 U.S.C. 552a, the contractor and its employees shall be considered employees of the agency during the performance of the contract.

(ii) Consistent with Parts 24 and 52 of the Federal Acquisition Regulation (FAR), contracts for the operation of a system of records shall identify specifically the record system and the work to be performed, and shall include in the solicitations and resulting contract the terms as prescribed by the FAR.

(iii) If the contractor must use records that are subject to this subpart and subpart G of this part to perform any part of a contract, the contractor activities are subject to this subpart and subpart G of this part.

(iv) This subpart and subpart G of this part do not apply to records of a contractor that are:

(A) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained

[7] Copies available from OPNAV/SECNAV Directives Control Office, Washington Navy Yard, Building 200, Washington, DC 20350–2000.

by the contractor for use in managing the contract;

(B) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to the naval activity;

(C) Maintained as training records by an educational organization contracted by a naval activity to provide training when the records of the contract students are similar to and commingled with training records of other students, such as admission forms, transcripts, and academic counseling and similar records; or

(D) Maintained by a consumer reporting agency to which records have been disclosed under contract in accordance with 31 U.S.C. 952d.

(v) For contracting that is subject to this subpart and subpart G of this part, naval activities shall publish instructions that:

(A) Furnish Privacy Act guidance to personnel who solicit, award, or administer Government contracts;

(B) Inform prospective contractors of their responsibilities under this subpart and subpart G of this part and the Department of the Navy Privacy Program;

(C) Establish an internal system for reviewing contractor's performance for compliance with the Privacy Act; and

(D) Provide for the biennial review of a random sample of contracts that are subject to this subpart and subpart G of this part.

(2) Contracting procedures. The Defense Acquisition Regulatory (DAR) Council, which oversees the implementation of the FAR within the Department of Defense, is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts that are subject to this subpart and subpart G of this part and 5 U.S.C. 552a.

(3) Contractor compliance. Naval activities shall establish contract surveillance programs to ensure contractors comply with the procedures established by the DAR Council under the preceding subparagraph.

(4) Disclosing records to contractors. Disclosing records to a contractor for use in performing a contract let by a naval activity is considered a disclosure within Department of the Navy. The contractor is considered the agent of Department of the Navy when receiving and maintaining the records for that activity.

§ 701.106 Safeguarding records in systems of records.

Establish appropriate administrative, technical, and physical safeguards to ensure the records in every system of records are protected from unauthorized alteration, destruction, or disclosure. Protect the records from reasonably anticipated threats or hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(a) *Minimum standards.* (1) Conduct risk analysis and management planning for each system of records. Consider sensitivity and use of the records, present and projected threats and vulnerabilities, and present and projected cost-effectiveness of safeguards. The risk analysis may vary from an informal review of a small, relatively insensitive system to a formal, fully quantified risk analysis of a large, complex, and highly sensitive system.

(2) Train all personnel operating a system of records or using records from a system of records in proper record security procedures.

(3) Label information exempt from disclosure under this subpart and subpart G of this part to reflect their sensitivity, such as "FOR OFFICIAL USE ONLY," "PRIVACY ACT SENSITIVE: DISCLOSE ON A NEED-TO-KNOW BASIS ONLY," or some other statement that alerts individuals of the sensitivity to the records.

(4) Administer special administrative, physical, and technical safeguards to protect records processed or stored in an automated data processing or word processing system to protect them from threats unique to those environments.

(b) *Records disposal.* (1) Dispose of records from systems of records so as to prevent inadvertent disclosure. Disposal methods are considered adequate if the records are rendered unrecognizable or beyond reconstruction (i.e., such as tearing, burning, melting, chemical decomposition, burying, pulping, pulverizing, shredding, or mutilation). Magnetic media may be cleared by completely erasing, overwriting, or degaussing the tape.

(2) The transfer of large volumes of records (e.g., printouts and computer cards) in bulk to a disposal activity such as a Defense Reutilization and Marketing Office for authorized disposal is not a disclosure of records, if the volume of records, coding of the information, or some other factor render it impossible to recognize any personal information about a specific individual.

(3) When disposing or destroying large quantities of records from a system of records, care must be taken to ensure that the bulk of the records is maintained to prevent easy identification of specific records. If such bulk is maintained, no special procedures are required. If bulk is not maintained, or if the form of the records makes individually identifiable information easily discernable, dispose of the records in accordance with § 701.106(b)(1).

§ 701.107 Criteria for creating, altering, amending and deleting Privacy Act systems of records.

(a) *Criteria for a new system of records.* A new system of records is one for which no existing system notice has been published in the **Federal Register**. If a notice for a system of records has been canceled or deleted, and it is determined that it should be reinstated or reused, a new system notice must be published in the **Federal Register**. Advance public notice must be given before a naval activity may begin to collect information for or use a new system of records. The following procedures apply:

(1) Describe in the record system notice the contents of the record system and the purposes and routine uses for which the information will be used and disclosed.

(2) The public shall be given 30 days to comment on any proposed routine uses before the routine uses are implemented.

(3) The notice shall contain the date the system of records will become effective.

(b) *Criteria for an alteration to a system of records notice.* A system is considered altered when any one of the following actions occur or is proposed:

(1) A significant increase or change in the number or types of individuals about whom records are maintained. For example, a decision to expand a system of records that originally covered personnel assigned to only one naval activity to cover personnel at several installations would constitute an altered system. An increase or decrease in the number of individuals covered due to normal growth or decrease is not an alteration.

(2) A change that expands the types or categories of information maintained. For example, a personnel file that has been expanded to include medical records would be an alteration.

(3) A change that alters the purpose for which the information is used. In order to be an alteration, the change must be one that is not reasonably inferred from any of the existing purposes.

(4) A change to equipment configuration (either hardware or software) that creates substantially greater use of records in the system. For example, placing interactive computer terminals at regional offices when the

system was formerly used only at the headquarters would be an alteration.

(5) A change in the manner in which records are organized or in the method by which records are retrieved.

(6) Combining record systems due to a reorganization within Department of the Navy.

(7) Retrieving by Social Security Numbers (SSNs), records that previously were retrieved only by names would be an alteration if the present notice failed to indicate retrieval by SSNs. An altered system of records must be published in the **Federal Register**. Submission for an alteration must contain a narrative statement, the specific changes altering the system, and the system of records notice.

(c) *Criteria for amending a systems of records notice.* Minor changes to published system of records notices are considered amendments. All amendments should be forwarded to CNO (N09B30) for publication in the **Federal Register**. When submitting an amendment to a system of records notice, the naval activity must include a description of the specific changes proposed and the system of records notice.

(d) *Criteria for deleting a system of records notice.* When a system of records is discontinued, incorporated into another system, or determined to be no longer subject to this subpart and subpart G of this part, a deletion notice must be published in the **Federal Register**. The deletion notice shall include the system identification number, system name, and the reason for deleting it. If a system is deleted through incorporation into or merger with another system, identify the successor system in the deletion notice.

§ 701.108 Collecting information about individuals.

(a) *Collecting directly from the individual.* To the greatest extent practicable, collect information for systems of records directly from the individual to whom the record pertains if the record may be used to make an adverse determination about the individual's rights, benefits, or privileges under the Federal programs.

(b) *Collecting information about individuals from third persons.* It might not always be practical to collect all information about an individual directly from that person, such as verifying information through other sources for security or employment suitability determinations; seeking other opinions, such as a supervisor's comments on past performance or other evaluations; obtaining the necessary information directly from the individual would be exceptionally difficult or would result in unreasonable costs or delays; or, the individual requests or consents to contacting another person to obtain the information.

(c) *Soliciting the social security number (SSN).* (1) It is unlawful for any Federal, State, or local government agency to deny an individual a right, benefit, or privilege provided by law because the individual refuses to provide his or her SSN. However, this prohibition does not apply if a Federal law requires that the SSN be provided, or the SSN is required by a law or regulation adopted before January 1, 1975, to verify the individual's identity for a system of records established and in use before that date.

(2) Before requesting an individual to provide the SSN, the individual must be advised whether providing the SSN is mandatory or voluntary; by what law or other authority the SSN is solicited; and what uses will be made of the SSN.

(3) The preceding advice relates only to the SSN. If other information about the individual is solicited for a system of records, a Privacy Act statement (PAS) also must be provided to him/her.

(4) The notice published in the **Federal Register** for each system of records containing SSNs solicited from individuals must indicate the authority for soliciting the SSNs and whether it is mandatory for the individuals to provide their SSNs. E.O. 9397 requires federal agencies to use SSNs as numerical identifiers for individuals in most federal records systems, however, it does not make it mandatory for individuals to provide their SSNs.

(5) When entering military service or civilian employment with the Department of the Navy, individuals must provide their SSNs. This is then the individual's numerical identifier and is used to establish personnel, financial, medical, and other official records (as authorized by E.O. 9397). The individuals must be given the notification described above. Once the individual has provided his or her SSN to establish the records, a notification is not required when the SSN is requested only for identification or to locate the records.

(6) The Federal Personnel Manual [8] must be consulted when soliciting SSNs for use in systems of records maintained by the Office of Personnel Management.

(7) A Department of the Navy activity may request an individual's SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975. However, the separate Privacy Act Statement for the SSN, alone, or a merged Privacy Act Statement covering both the SSN and other items of personal information, must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his or her SSN, the activity must be prepared to identify the individual by alternate means.

(d) *Contents of Privacy Act Statement.* (1) When an individual is requested to furnish information about himself/herself for a system of records, a Privacy Act Statement must be provided to the individual, regardless of the method used to collect the information (i.e., forms, personal or telephonic interview, etc). If the information requested will not be included in a system of records, a Privacy Act Statement is not required.

(2) The Privacy Act Statement shall include the following:

(i) The Federal law or E.O. that authorizes collecting the information (i.e., E.O. 9397 authorizes collection of SSNs);

(ii) Whether or not it is mandatory for the individual to provide the requested information (It is only mandatory when a Federal law or E.O. of the President specifically imposes a requirement to furnish the information and provides a penalty for failure to do so. If furnishing information is a condition for granting a benefit or privilege voluntarily sought by the individual, it is voluntary for the individual to give the information.);

(iii) The principle purposes for collecting the information;

(iv) The routine uses that will be made of the information (i.e., to whom and why it will be disclosed outside the Department of Defense); and

(v) The possible effects on the individual if the requested information is not provided.

(3) The Privacy Act Statement must appear on the form used to collect the information or on a separate form that can be retained by the individual collecting the information. If the information is collected by means other than a form completed by the individual, i.e., solicited over the telephone, the Privacy Act Statement should be read to the individual and if requested by the individual, a copy sent to him/her. There is no requirement that the individual sign the Privacy Act Statement.

(e) *Format for Privacy Act Statement.* When forms are used to collect information about individuals for a system of records, the Privacy Act Statement shall appear as follows (listed in the order of preference):

(1) Immediately below the title of the form,

[8] Copies available from the Office of Personnel Management, 1900 E Street, Washington, DC 20415.

(2) Elsewhere on the front page of the form (clearly indicating it is the Privacy Act Statement),

(3) On the back of the form with a notation of its location below the title of the form, or

(4) On a separate form which the individual may keep.

§ 701.109 Access to records.

(a) *Individual access to records.* (1) Right of access. Only individuals who are subjects of records maintained in systems of records and by whose personal identifiers the records are retrieved have the right of individual access under this subpart and subpart G of this part, unless they provide written authorization for their representative to act on their behalf. Legal guardians or parents acting on behalf of a minor child also have the right of individual access under this subpart and subpart G of this part.

(2) Notification of record's existence. Each naval activity shall establish procedures for notifying an individual, in response to his or her request, if a system of records identified by him/her contains a record pertaining to the individual.

(3) Individual request for access. Individuals shall address requests for access to records in systems of records to the system manager or the office designated in the Department of the Navy compilation of system notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances").

(4) Verifying identity.

(i) An individual shall provide reasonable verification of identity before obtaining access to records.

(ii) When requesting records in writing, naval activities may not insist that a requester submit a notarized signature. The courts have ruled that an alternative method of verifying identity must be established for individuals who do not have access to notary services. This alternative permits requesters to provide an unsworn declaration that states "I declare under perjury or penalty under the laws of the United States of American that the foregoing is true and correct."

(iii) When an individual seeks access in person, identification can be verified by documents normally carried by the individual (i.e., identification card, driver's license, or other license, permit or pass normally used for identification purposes).

(iv) When access is requested other than in writing, identity may be verified by the individual's providing minimum identifying data such as full name, date and place of birth, or other information necessary to locate the record sought. If the information sought is sensitive, additional identifying data may be required. Telephonic requests should not be honored.

(v) Allow an individual to be accompanied by a person of his or her choice when viewing the record; however, require the individual to provide written authorization to have the record discussed in front of the other person.

(vi) Do not deny access to an individual who is the subject of the record solely for refusing to divulge his or her SSN, unless it is the only means of retrieving the record or verifying identity.

(vii) Do not require the individual to explain why he or she is seeking access to a record under this subpart and subpart G of this part.

(viii) Only a designated denial authority may deny access. The denial must be in writing and contain the information required by § 701.109(d).

(5) Blanket requests not honored. Do not honor requests from individuals for notification and/or access concerning all Department of the Navy systems of records. In these instances, notify the individual that requests for notification and/or access must be directed to the appropriate system manager for the particular record system being requested, as indicated in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances"; and the request must either designate the particular system of records to be searched, or provide sufficient information for the system manager to identify the appropriate system. Also, provide the individual with any other information needed for obtaining consideration of his or her request.

(6) Granting individual access to records.

(i) Grant the individual access to the original record (or exact copy) without any changes or deletions, other than those made in accordance with § 701.113.

(ii) Grant the individual's request for an exact copy of the record, upon the signed authorization of the individual, and provide a copy to anyone designated by the individual. In either case, the copying fees may be assessed to the individual pursuant to § 701.109(b).

(iii) If requested, explain any record or portion of a record that is not understood, as well as any changes or deletions.

(7) Illegible or incomplete records. Do not deny an individual access solely because the physical condition or format of the record does not make it readily available (i.e., when the record is in a deteriorated state or on magnetic tape). Either prepare an extract or recopy the document exactly.

(8) Access by parents and legal guardians.

(i) The parent of any minor, or the legal guardian of any individual declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may obtain access to the record of the minor or incompetent individual if the parent or legal guardian is acting on behalf or for the benefit of the minor or incompetent. However, with respect to access by parents and legal guardians to medical records and medical determinations about minors, use the following procedures:

(A) In the United States, the laws of the state where the records are located might afford special protection to certain medical records (i.e., drug and alcohol abuse treatment, and psychiatric records). The state statutes might apply even if the records are maintained by a naval medical facility.

(B) For installations located outside the U.S., the parent or legal guardian of a minor shall be denied access if all four of the following conditions are met:

(1) The minor at the time of the treatment or consultation was 15, 16, or 17 years old;

(2) The treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor;

(3) The minor indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian; and

(4) The parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(ii) A minor or incompetent has the same right of access as any other individual under this subpart and subpart G of this part. The right of access of the parent or legal guardian is in addition to that of the minor or incompetent.

(9) Access to information compiled in reasonable anticipation of a civil proceeding.

(i) An individual is not entitled under this subpart and subpart G of this part to access information compiled in reasonable anticipation of a civil action or proceeding.

(ii) The term "civil action or proceeding" includes quasi-judicial and pre-trial judicial proceedings, as well as formal litigation.

(iii) Section 701.109(9)(i) and (ii) do not prohibit access to records compiled

or used for purposes other than litigation, nor prohibit access to systems of records solely because they are frequently subject to litigation. The information must have been compiled for the primary purpose of litigation.

(10) Personal notes or records not under the control of the Department of he Navy.

(i) Certain documents under the control of a Department of the Navy employee and used to assist him/her in performing official functions are not considered Department of the Navy records within the meaning of this subpart and subpart G of this part. These documents are not systems of records that are subject to this subpart and subpart G of this part, if they are:

(A) Maintained and discarded solely at the discretion of the author;

(B) Created only for the author's personal convenience;

(C) Not the result of official direction or encouragement, whether oral or written; and

(D) Not shown to other persons for any reason or filed in agency files.

(11) Relationship between the Privacy Act and FOIA. In some instances, individuals requesting access to records pertaining to themselves may not know which Act to cite as the appropriate statutory authority. The following guidelines are to ensure that the individuals receive the greatest degree of access under both Acts:

(i) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, are processed under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(ii) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552a are processed under this subpart and subpart G of this part.

(iii) Access requests that cite both 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988 and 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act are processed under the Act that provides the greater degree of access. Inform the requester which instruction was used in granting or denying access.

(iv) Do not penalize the individual access to his or her records otherwise releasable under 5 U.S.C. 552a and periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances", simply because he or she failed to cite the appropriate statute or instruction.

(12) Time Limits. Acknowledge requests for access made under Privacy Act or this subpart and subpart G of this part within 10 working days after receipt, and advise the requester of your decision to grant/deny access within 30 working days.

(b) *Reproduction fees.* Normally, only one copy of any record or document will be provided. Checks or money orders for fees should be made payable to the Treasurer of the United States and deposited to the miscellaneous receipts of the treasury account maintained at the finance office servicing the activity.

(1) Fee schedules shall include only the direct cost of reproduction and shall not include costs of:

(i) Time or effort devoted to searching for or reviewing the record by naval personnel;

(ii) Fees not associated with the actual cost of reproduction;

(iii) Producing a copy when it must be provided to the individual without cost under another regulation, directive, or law;

(iv) Normal postage;

(v) Transportation of records or personnel; or

(vi) Producing a copy when the individual has requested only to review the record and has not requested a copy to keep, and the only means of allowing review is to make a copy (e.g., the record is stored in a computer and a copy must be printed to provide individual access, or the naval activity does not wish to surrender temporarily the original record for the individual to review).

(2) Fee schedules.

(i) Office copy (per page).....$.10

(ii) Microfiche (per fiche).....$.25

(3) Fee waivers. Waive fees automatically if the direct cost of reproduction is less than $15, unless the individual is seeking an obvious extension or duplication of a previous request for which he or she was granted a waiver. Decisions to waive or reduce fees that exceed $15 are made on a case-by-case basis.

(c) *Denying individual access.* (1) Deny the record subject access to requested record only if it was compiled in reasonable anticipation of a civil action or proceeding or is in a system of records that has been exempt from the access provisions of § 701.113.

(2) Deny the individual access only to those portions of the record for which the denial will serve a legitimate government purpose. An individual may be refused access for failure to comply with established procedural requirements, but must be told the specific reason for the refusal and the proper access procedures.

(3) Deny the individual access to his or her medical and psychological records if it is determined that access could have an adverse affect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical practitioner. If it is medically indicated that access could have an adverse mental or physical effect on the individual, provide the record to a medical practitioner named by the individual, along with an explanation of why access without medical supervision could be harmful to the individual. In any case, do not require the named medical practitioner to request the record for the individual. If, however, the individual refuses or fails to designate a medical practitioner, access shall be refused. The refusal is not considered a denial for reporting purposes under the Privacy Act.

(d) *Notifying the individual.* Written denial of access must be given to the individual. The denial letter shall include:

(1) The name, title, and signature of a designated denial authority;

(2) The date of the denial;

(3) The specific reason for the denial, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part authorizing the denial;

(4) The individual's right to appeal the denial within 60 calendar days of the date the notice is mailed; and

(5) The title and address of the review authority.

§ 701.110 Amendment of records.

(a) *Individual review and amendment.* Encourage individuals to review periodically, the information maintained about them in systems of records, and to avail themselves of the amendment procedures established by this subpart and subpart G of this part.

(1) Right to amend. An individual may request to amend any record retrieved by his or her personal identifier from a system of records, unless the system has been exempt from the amendment procedures under this subpart. Amendments under this subpart and subpart G of this part are limited to correcting factual matters, not matters of opinion (i.e., information contained in evaluations of promotion potential or performance appraisals). When records sought to be amended are covered by another issuance, the administrative procedures under that issuance must be exhausted before using the Privacy Act. In other words, the Privacy Act may not be used to avoid the administrative procedures required by the issuance actually covering the records in question.

(2) In writing. Amendment requests shall be in writing, except for routine

administrative changes, such as change of address.

(3) Content of amendment request. An amendment request must include a description of the information to be amended; the reason for the amendment; the type of amendment action sought (i.e., deletion, correction, or addition); and copies of available documentary evidence supporting the request.

(b) *Burden of proof.* The individual must provide adequate support for the request.

(c) *Verifying identity.* The individual may be required to provide identification to prevent the inadvertent or intentional amendment of another's record. Use the verification guidelines provided in § 701.109(a)(4).

(d) *Limits on amending judicial and quasi-judicial evidence and findings.* This subpart and subpart G of this part do not permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to such records must be made in accordance with procedures established for such proceedings. This subpart and subpart G of this part do not permit a collateral attack on a judicial or quasi-judicial finding; however, this subpart and subpart G of this part may be used to challenge the accuracy of recording the finding in a system of records.

(e) *Standards for amendment request determinations.* The record which the individual requests to be amended must meet the recordkeeping standards established in § 701.105. The record must be accurate, relevant, timely, complete, and necessary. If the record in its present state does not meet each of the criteria, grant the amendment request to the extent necessary to meet them.

(f) *Time limits.* Within 10 working days of receiving an amendment request, the systems manager shall provide the individual a written acknowledgement of the request. If action on the amendment request is completed within the 10 working days and the individual is so informed, no separate acknowledgment is necessary. The acknowledgment must clearly identify the request and advise the individual when to expect notification of the completed action. Only under exceptional circumstances should more than 30 working days be required to complete the action on an amendment request.

(g) *Granting an amendment request in whole or in part.* (1) Notify the requester. To the extent the amendment request is granted, the systems manager shall notify the individual and make the appropriate amendment.

(2) Notify previous recipients. Notify all previous recipients of the information (as reflected in the disclosure accounting record) that the amendment has been made and provide each a copy of the amended record. Recipients who are known to be no longer retaining the record need not be advised of the amendment. If it is known that other naval activities, DoD components, or Federal agencies have been provided the information that now requires amendment, or if the individual requests that these agencies be notified, provide the notification of amendment even if those activities or agencies are not listed on the disclosure accounting form.

(h) *Denying an amendment request in whole or in part.* If the amendment request is denied in whole or in part, promptly notify the individual in writing. Include in the notification to the individual the following:

(1) Those sections of 5 U.S.C. 552a or this subpart and subpart G of this part upon which the denial is based;

(2) His or her right to appeal to the head of the activity for an independent review of the initial denial;

(3) The procedures for requesting an appeal, including the title and address of the official to whom the appeal should be sent; and

(4) Where the individual can receive assistance in filing the appeal.

(i) *Requests for amending OPM records.* The records in an OPM government-wide system of records are only temporarily in the custody of naval activities. Requests for amendment of these records must be processed in accordance with OPM Regulations and the Federal Personnel Manual. The denial authority may deny a request, but all denials are subject to review by the Assistant Director for Workforce Information, Personnel Systems Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

(j) *Individual's statement of disagreement.* (1) If the review authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement listing the reasons for disagreeing with the refusal to amend.

(2) If possible, incorporate the statement of disagreement into the record. If that is not possible, annotate the record to reflect that the statement was filed and maintain the statement so that it can be readily obtained when the disputed information is used or disclosed.

(3) Furnish copies of the statement of disagreement to all individuals listed on the disclosure accounting form (except those known to be no longer retaining the record), as well as to all other known holders of copies of the record.

(4) Whenever the disputed information is disclosed for any purpose, ensure that the statement of disagreement also is used or disclosed.

(k) *Department of the Navy statement of reasons.* (1) If the individual files a statement of disagreement, the naval activity may file a statement of reasons containing a concise summary of the activity's reasons for denying the amendment request.

(2) The statement of reasons shall contain only those reasons given to the individual by the appellate official and shall not contain any comments on the individual's statement of disagreement.

(3) At the discretion of the naval activity, the statement of reasons may be disclosed to those individuals, activities, and agencies that receive the statement of disagreement.

§ 701.111 Privacy Act appeals.

(a) *How to file an appeal.* The following guidelines shall be followed by individuals wishing to appeal a denial of notification, access, or amendment of records.

(1) The appeal must be received by the cognizant review authority (i.e., ASN (M&RA), NJAG, OGC, or OPM) within 60 calendar days of the date of the response.

(2) The appeal must be in writing and requesters should provide a copy of the denial letter and a statement of their reasons for seeking review.

(b) *Time of receipt.* The time limits for responding to an appeal commence when the appeal reaches the office of the review authority having jurisdiction over the record. Misdirected appeals should be referred expeditiously to the proper review authority.

(c) *Review authorities.* ASN (M&RA), NJAG, and OGC are authorized to adjudicate appeals made to SECNAV. NJAG and OGC are further authorized to delegate this authority to a designated Assistant NJAG and the Principal Deputy General or Deputy General Counsel, respectively, under such terms and conditions as they deem appropriate.

(1) If the record is from a civilian Official Personnel Folder or is contained on any other OPM forms, send the appeal to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415. Records in all systems of records maintained in

accordance with the OPM government-wide systems notices are only in the temporary custody of the Department of the Navy.

(2) If the record pertains to the employment of a present or former Navy and Marine Corps civilian employee, such as Navy or Marine Corps civilian personnel records or an employee's grievance or appeal file, to the General Counsel, Navy Department, Washington, DC 20360–5110.

(3) If the record pertains to a present or former military member's fitness reports or performance evaluations to the Assistant Secretary of the Navy (Manpower and Reserve Affairs), Navy Department, Washington, DC 20350–1000.

(4) All other records dealing with present or former military members to the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400.

(d) *Appeal procedures.* (1) If the appeal is granted, the review authority shall advise the individual that his or her appeal has been granted and provide access to the record being sought.

(2) If the appeal is denied totally or in part, the appellate authority shall advise the reason(s) for denying the appeal, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part that apply; the date of the appeal determination; the name, title, and signature of the appellate authority; and a statement informing the requester of his or her right to seek judicial relief in the Federal District Court.

(e) *Final action, time limits and documentation.* (1) The written appeal notification granting or denying access is the final naval activity action on the initial request for access.

(2) All appeals shall be processed within 30 working days of receipt, unless the appellate authority finds that an adequate review cannot be completed within that period. If additional time is needed, notify the applicant in writing, explaining the reason for the delay and when the appeal will be completed.

(f) *Denial of appeal by activity's failure to act.* An individual may consider his or her appeal denied if the appellate authority fails to:

(1) Take final action on the appeal within 30 working days of receipt when no extension of time notice was given; or

(2) Take final action within the period established by the notice to the appellate authority of the need for an extension of time to complete action on the appeal.

§ 701.112 Disclosure of records.

(a) *Conditions of disclosure.* (1) 5 U.S.C. 552a prohibits an agency from disclosing any record contained in a system of records to any person or agency, except when the record subject gives written consent for the disclosure or when one of the 12 conditions listed below in this subsection applies.

(2) Except for disclosures made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program," before disclosing any record from a system of records to any recipient other than a Federal agency, make reasonable efforts to ensure the record is accurate, relevant, timely, and complete for Department of the Navy purposes. Records discovered to have been improperly filed in the system of records should be removed before disclosure.

(i) If validation cannot be obtained from the record itself, the naval activity may contact the record subject (if reasonably available) to verify the accuracy, timeliness, completeness, and relevancy of the information.

(ii) If validation cannot be obtained from the record and the record subject is not reasonably available, advise the recipient that the information is believed to be valid as of a specific date and reveal any factors bearing on the validity of the information.

(b) *Nonconsensual disclosures.* 5 U.S.C. 552a provides 12 instances when a record in a system of records may be disclosed without the written consent of the record subject:

(1) Disclosures within the Department of Defense. For purposes of disclosing records, the Department of Defense is considered a single agency; hence, a record may be disclosed to any officer or employee in the Department of Defense (including private contractor personnel who are engaged to perform services needed in connection with the operation of a system of records for a DoD component), who have a need for the record in the performance of their duties, provided this use is compatible with the purpose for which the record is maintained. This provision is based on the "need to know" concept.

(i) For example, this may include disclosure to personnel managers, review boards, discipline officers, courts-martial personnel, medical officers, investigating officers, and representatives of the Judge Advocate General, Auditor General, Naval Inspector General, or the Naval Investigative Service, who require the information in order to discharge their official duties. Examples of personnel outside the Department of the Navy who may be included are: Personnel of the Joint Staff, Armed Forces Entrance and Examining Stations, Defense Investigative Service, or the other military departments, who require the information in order to discharge an official duty.

(ii) It may also include the transfer of records between naval components and non-DoD agencies in connection with the Personnel Exchange Program (PEP) and interagency support agreements. Disclosure accountings are not required for intra-agency disclosure and disclosures made in connection with interagency support agreements or the PEP. Although some disclosures authorized by this paragraph might also meet the criteria for disclosure under other exceptions specified in the following paragraphs of this section, they should be treated under this paragraph for disclosure accounting purposes.

(2) Disclosures required by the FOIA.

(i) A record must be disclosed if required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, which is implemented by Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(ii) 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program" require that records be made available to any person requesting them in writing, unless the record is exempt from disclosure under one of the nine FOIA exemptions. Therefore, if a record is not exempt from disclosure, it must be provided to the requester.

(iii) Certain records, such as personnel, medical, and similar files, are exempt from disclosure under exemption (b)(6) of 5 U.S.C. 552 (1988) as amended by the Freedom of Information Act Reform Act of 1986. Under that exemption, disclosure of information pertaining to an individual can be denied only when the disclosure would be a clearly unwarranted invasion of personal privacy. The first step is to determine whether a viable personal privacy interest exists in these records involving an identifiable living person. The second step is to consider how disclosure would benefit the general public in light of the content and context of the information in question. The third step is to determine whether the identified public interests qualify for consideration. The fourth step is to balance the personal privacy

interests against the qualifying public interest. Numerous factors must be considered such as: The nature of the information to be disclosed (i.e., Do individuals normally have an expectation of privacy in the type of information to be disclosed?); importance of the public interest served by the disclosure and probability of further disclosure which may result in an unwarranted invasion of privacy; relationship of the requester to the public interest being served; newsworthiness of the individual to whom the information pertains (i.e., high ranking officer, public figure); degree of sensitivity of the information from the standpoint of the individual or the individual's family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or the individual's family; the passage of time since the event which is the topic of the record (i.e., to disclose that an individual has been arrested and is being held for trial by court-martial is normally permitted, while to disclose an arrest which did not result in conviction might not be permitted after the passage of time); and the degree to which the information is already in the public domain or is already known by the particular requester.

(iv) Records or information from investigatory records, including personnel security investigatory records, are exempt from disclosure under the broader standard of "an unwarranted invasion of personal privacy" found in exemption (b)(7)(C) of 5 U.S.C. 552. This broader standard applies only to records or information compiled for law enforcement purposes.

(v) A disclosure under 5 U.S.C. 552 about military members must be in accordance with Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program", but the following information normally may be disclosed from military personnel records (except for those personnel assigned to sensitive or routinely deployable units, or located in a foreign territory), without a clearly unwarranted invasion of personal privacy: Full name, rank, date of rank, base pay, past duty stations, present duty station and future duty station (if finalized), unless the stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, office or duty telephone number, source of commission, promotion sequence number, awards and decorations, attendance at professional military schools, and duty status at any given time.

(vi) The following information normally may be disclosed from civilian employee records about CONUS employees: Full name, present and past position titles and occupational series, present and past grades, present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious and Distinguished Executive Ranks, and allowances and differentials), past duty stations, present duty station and future duty station (if finalized), including room numbers, shop designations, or other identifying information regarding buildings or places of employment, unless the duty stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the disclosure of which would not interfere with law enforcement programs or severely inhibit Department of the Navy effectiveness.

(viii) Disclosure of home addresses and home telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, they may be disclosed if the individual has consented to the disclosure; the disclosure is required by the FOIA; the disclosure is required by another law, such as 42 U.S.C. 653, which provides assistance to states in locating parents who have defaulted on child support payments, or the collection of alimony, and to state and local tax authorities for the purpose of enforcing tax laws. However, care must be taken prior to release to ensure that a written record is prepared to document the reasons for the release determination.

(A) When compiling home addresses and telephone numbers, the individual may be offered the option of authorizing disclosure of the information without further consent for specific purposes, such as locator services. In that case, the information may be disclosed for the stated purpose without further consent. If the information is to be disclosed for any other purpose, a signed consent permitting the additional disclosure must be obtained from the individual.

(B) Before listing home addresses and telephone numbers in Department of the Navy telephone directories, give the individual the opportunity to refuse such a listing. If the individual requests that the home address or telephone number not be listed in the directory, do not assess any additional fee associated with maintaining an unlisted number for government-owned telephone services.

(C) The sale or rental of lists of names and addresses is prohibited unless such action is specifically authorized by Federal law. This does not prohibit the disclosure of names and addresses made under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(D) In response to FOIA requests, information concerning special and general courts-martial results (e.g., records of trial) are releasable. However, information regarding summary courts-martial and non-judicial punishment are generally not releasable. The balancing of interests must be done. It is possible that in a particular case, information regarding non-judicial punishment should be disclosed pursuant to a FOIA request (i.e., the facts leading to a nonjudicial punishment are particularly newsworthy or the case involves a senior official abusing the public trust through office-related misconduct, such as embezzlement). Announcement of nonjudicial punishment dispositions under JAGMAN, subsection 0107, is a proper exercise of command authority and not a release of information under FOIA or this subpart and subpart G of this part. Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (MI–3) prior to responding to requesters, including all requests for this type of information from members of Congress.

(3) Disclosures for established routine uses.

(i) Records may be disclosed outside the Department of the Navy if the disclosure is for an established routine use.

(ii) A routine use shall:

(A) Be compatible with and related to the purpose for which the record was created;

(B) Identify the persons or organizations to whom the record may be disclosed;

(C) Identify specifically the uses for which the information may be employed by the receiving person or organization; and

(D) Have been published previously in the **Federal Register**.

(iii) A routine use shall be established for each user of the information outside the Department of the Navy who needs the information for an official purpose.

(iv) Routine uses may be established, discontinued, or amended without the consent of the individuals to whom the records pertain. However, new and amended routine uses must be published in the **Federal Register** at least 30 days before the information may be disclosed under their provisions.

(v) In addition to the routine uses established by the Department of the Navy for each system of records, common "Blanket Routine Uses," applicable to all record systems maintained with the Department of the Navy, have been established. These "Blanket Routine Uses" are published at the beginning of the Department of the Navy's **Federal Register** compilation of record systems notices rather than at each system notice and are also reflected in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances." Unless a system notice specifically excludes a system of records from a "Blanket Routine Use," all "Blanket Routine Uses" apply to that system.

(vi) If the recipient has not been identified in the **Federal Register** or if the recipient, though identified, intends to employ the information for a purpose not published in the **Federal Register**, the written consent of the individual is required before the disclosure can be made.

(4) Disclosures to the Bureau of the Census. Records may be disclosed to the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activities authorized by 13 U.S.C. 8.

(5) Disclosures for statistical research or reporting. Records may be disclosed to a recipient for statistical research or reporting if:

(i) Prior to the disclosure, the recipient has provided adequate written assurance that the records shall be used solely for statistical research or reporting; and

(ii) The records are transferred in a form that does not identify individuals.

(6) Disclosures to the National Archives and Records Administration.

(i) Records may be disclosed to the National Archives and Records Administration for evaluation to determine whether the records have sufficient historical or other value to warrant preservation by the Federal government. If preservation is warranted, the records will be retained by the National Archives and Record Administration, which becomes the official owner of the records.

(ii) Records may be disclosed to the National Archives and Records Administration to carry out records management inspections required by Federal law.

(iii) Records transferred to a Federal Records Center operated by the National Archives and Records Administration for storage are not within this category. Those records continue to be maintained and controlled by the transferring naval activity. The Federal Records Center is considered the agent of Department of the Navy and the disclosure is made under § 701.112(b)(1).

(7) Disclosures when requested for law enforcement purposes.

(i) A record may be disclosed to another agency or an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity if:

(A) The civil or criminal law enforcement activity is authorized by law (federal, state or local); and

(B) The head of the agency (or his or her designee) has made a written request to the naval activity specifying the particular record or portion desired and the law enforcement purpose for which it is sought.

(ii) Blanket requests for any and all records pertaining to an individual shall not be honored. The requesting agency must specify each record or portion desired and how each relates to the authorized law enforcement activity.

(iii) If a naval activity discloses a record outside the Department of Defense for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be under an established routine use, such as the "Blanket Routine Use" for law enforcement.

(iv) Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a and this paragraph, but may be made only under established "Blanket Routine Uses," routine uses published in the individual record system notice, or to other governing authority.

(8) Disclosure to protect the health or safety of an individual. Disclosure may be made under emergency conditions involving circumstances affecting the health and safety of an individual (i.e., when the time required to obtain the consent of the individual to whom the records pertain might result in a delay which could impair the health or safety of a person) provided notification of the disclosure is sent to the record subject. Sending the notification to the last known address is sufficient. In instances where information is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone number. The requested information, if then considered appropriate and of an emergency nature, may be provided by return call.

(9) Disclosures to Congress.

(i) A record may be disclosed to either House of Congress at the request of either the Senate or House of Representatives as a whole.

(ii) A record also may be disclosed to any committee, subcommittee, or joint committee of Congress if the disclosure pertains to a matter within the legislative or investigative jurisdiction of the committee, subcommittee, or joint committee.

(iii) Disclosure may not be made to a Member of Congress requesting in his or her individual capacity. However, for Members of Congress making inquiries on behalf of individuals who are subjects of records, a "Blanket Routine Use" has been established to permit disclosures to individual Members of Congress.

(A) When responding to a congressional inquiry made on behalf of a constituent by whose identifier the record is retrieved, there is no need to verify that the individual has authorized the disclosure to the Member of Congress.

(B) The oral or written statement of a Congressional staff member is sufficient to establish that a request has been received from the individual to whom the record pertains.

(C) If the constituent inquiry is made on behalf of an individual other than the record subject, provide the Member of Congress only that information releasable under 5 U.S.C. 552. Advise the Member of Congress that the written consent of the record subject is required before additional information may be disclosed. Do not contact the record subject to obtain consent for the disclosure to the Member of Congress unless the Congressional office specifically requests it be done.

(10) Disclosures to the Comptroller General for the General Accounting Office (GAO). Records may be disclosed to the Comptroller General of the U.S., or authorized representative, in the course of the performance of the duties of the GAO.

(11) Disclosures under court orders.

(i) Records may be disclosed under the order of a court of competent jurisdiction.

(ii) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the individual to whom the record pertains. Notification sent to the last known address of the individual is sufficient. If the order has not yet become a matter of public record, seek to be advised as to when it will become public. Neither the identity or the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the record subject unless the court order has become a matter of public record.

(iii) The court order must bear the signature of a federal, state, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of a court of competent jurisdiction. A photocopy of the order, regular on its face, will be sufficient evidence of the court's exercise of its authority of the minimal requirements of SECNAVINST 5820.8A[9], "Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel."

(12) Disclosures to consumer reporting agencies. Certain information may be disclosed to consumer reporting agencies (i.e., credit reference companies such as TRW and Equifax, etc.) as defined by the Federal Claims Collection Act of 1966 (31 U.S.C. 952d). Under the provisions of that Act, the following information may be disclosed to a consumer reporting agency:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual;

(ii) The amount, status, and history of the claim; and

(iii) The agency or program under which the claim arose. 31 U.S.C. 952d specifically requires that the Federal Register notice for the system of records from which the information will be disclosed indicate that the information may be disclosed to a consumer reporting agency.

(c) *Disclosures to commercial enterprises.* Records may be disclosed to commercial enterprises only under the criteria established by Secretary of the Navy Instruction 5720.42E and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support.

(1) Any information required to be disclosed by Secretary of the Navy Instruction 5720.42E and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support may be disclosed to a requesting commercial enterprise.

(2) Commercial enterprises may present a consent statement signed by the individual indicating specific conditions for disclosing information from a record. Statements such as the following, if signed by the individual, are considered sufficient to authorize the disclosure: I hereby authorize the Department of the Navy to verify my SSN or other identifying information and to disclose my home address and telephone number to authorized representatives of (name of commercial enterprise) to be used in connection with my commercial dealings with that enterprise. All information furnished will be used in connection with my financial relationship with (name of commercial enterprise).

(3) When a consent statement as described in the preceding subsection is presented, provide the information to the commercial enterprise, unless the disclosure is prohibited by another regulation or Federal law.

(4) Blanket consent statements that do not identify the Department of Defense or Department of the Navy, or that do not specify exactly the information to be disclosed, may be honored if it is clear that the individual, in signing the consent statement, was seeking a personal benefit (i.e., loan for a house or automobile) and was aware of the type of information necessary to obtain the benefit sought.

(5) Do not honor requests from commercial enterprises for official evaluations of personal characteristics such as personal financial habits.

(d) *Disclosure of Health Care Records to the Public.* This paragraph applies to disclosure of information to the news media and the public concerning individuals treated or hospitalized in Department of the Navy medical facilities and, when the cost of care is paid by the Department of the Navy, in non-Federal facilities.

(1) Disclosures without the individual's consent. Normally, the following information may be disclosed without the individual's consent:

(i) Information required to be released by Secretary of the Navy Instruction 5720.42E and OPM Regulations and the Federal Personnel Manual, as well as the information listed in § 701.112(b)(2)(v) for military personnel and in § 701.112(b)(2).

(ii) For civilian employees; and

(iii) General information concerning medical conditions, i.e., date of admission or disposition; present medical assessment of the individual's condition if the medical practitioner has volunteered the information, i.e., the individual's condition presently is (stable) (good) (fair) (serious) (critical), and the patient is (conscious) (semi-conscious) (unconscious).

(2) Disclosures with the individual's consent. With the individual's informed consent, any information about the individual may be disclosed. If the individual is a minor or has been declared incompetent by a court of competent jurisdiction, the parent of the minor or appointed legal guardian of the incompetent may give consent on behalf of the individual.

(e) *Disclosure of Personal Information on Group/Bulk Orders.* Do not use personal information including complete SSNs, home addresses and phone numbers, dates of birth, etc., on group/bulk orders. This personal information should not be posted on lists that everyone listed on the orders sees. Such a disclosure of personal information violates the Privacy Act and this subpart and subpart G of this part.

(f) *Disclosure Accounting.* Keep an accurate record of all disclosures made from a record (including those made with the consent of the individual) except those made to DoD personnel for use in performing their official duties; and those made under the FOIA. Disclosure accounting is to permit the individual to determine what agencies or persons have been provided information from the record, enable Department of the Navy activities to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trial of Department of the Navy's compliance with 5 U.S.C. 552a.

(1) Disclosure accountings shall contain the date of the disclosure; a description of the information disclosed; the purpose of the disclosure; and the name and address of the person or agency to whom the disclosure was made.

(2) The record subject has the right of access to the disclosure accounting except when the disclosure was made at the request of a civil or criminal law enforcement agency under § 701.112(b)(7); or when the system of records has been exempted from the requirement to provide access to the disclosure accounting.

(g) *Methods of disclosure accounting.* Since the characteristics of various records maintained within the Department of the Navy vary widely, no uniform method for keeping disclosure accountings is prescribed. The primary criteria are that the selected method be one which will:

(1) Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her;

(2) Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

(3) Provide a means to prove, if necessary that the activity has complied with the requirements of 5 U.S.C. 552a and this subpart and subpart G of this part.

(h) *Retention of Disclosure Accounting.* Maintain a disclosure accounting of the life of the record to which the disclosure pertains, or 5 years after the date of the disclosure, whichever is longer. Disclosure accounting records are normally

[9] Copies available from the Judge Advocate General, Navy Department, (Code 34), 200 Stovall Street, Alexandria, VA 22332-2400.

maintained with the record, as this will ensure compliance with § 701.112(f).

§ 701.113 Exemptions.

(a) *Using exemptions.* No system of records is automatically exempt from all provisions of 5 U.S.C. 552a. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the exemption rule for the system. Subpart G of this part contains the systems designated as exempt, the types of exemptions claimed, the authority and reasons for invoking the exemptions and the provisions of 5 U.S.C. 552a from which each system has been exempt. Exemptions are discretionary on the part of Department of the Navy and are not effective until published as a final rule in the **Federal Register**. The naval activity maintaining the system of records shall make a determination that the system is one for which an exemption may be established and then propose an exemption rule for the system. Submit the proposal to CNO (N09B30) for approval and publication in the **Federal Register**.

(b) *Types of exemptions.* There are two types of exemptions permitted by 5 U.S.C. 552a.

(1) *General exemptions.* Those that authorize the exemption of a system of records from all but specifically identified provisions of 5 U.S.C. 552a.

(2) *Specific exemptions.* Those that allow a system of records to be exempt from only a few designated provisions of 5 U.S.C. 552a.

(c) *Establishing exemptions.* (1) 5 U.S.C. 552a authorizes the Secretary of the Navy to adopt rules designating eligible systems of records as exempt from certain requirements. The Secretary of the Navy has delegated the CNO (N09B30) to make a determination that the system is one for which an exemption may be established and then propose and establish an exemption rule for the system. No system of records within Department of the Navy shall be considered exempt until the CNO (N09B30) has approved the exemption and an exemption rule has been published as a final rule in the **Federal Register**. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the Department of the Navy exemption rule for the system.

(2) No exemption may be established for a system of records until the system itself has been established by publishing a notice in the **Federal Register**, at least 30 days prior to the effective date, describing the system. This allows interested persons an opportunity to comment. An exemption may not be used to deny an individual access to information that he or she can obtain under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(d) *Exemption for classified material.* All systems of records maintained by the Department of the Navy shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contains any information properly classified under E.O. 12356 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

Note: Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without establishing an exemption rule.

(e) *Exempt records in nonexempt systems.* (1) An exemption rule applies to the system of records for which it was established. If a record from an exempt system is incorporated intentionally into a system that has not been exempt, the published notice and rules for the nonexempt system will apply to the record and it will not be exempt from any provisions of 5 U.S.C. 552a.

(2) A record from one component's (i.e., Department of the Navy) exempted system that is temporarily in the possession of another component (i.e., Army) remains subject to the published system notice and rules of the originating component's (i.e., Department of the Navy). However, if the non-originating component incorporates the record into its own system of records, the published notice and rules for the system into which it is incorporated shall apply. If that system of records has not been exempted, the record shall not be exempt from any provisions of 5 U.S.C. 552a.

(3) A record accidentally misfiled into a system of records is governed by the published notice and rules for the system of records in which it actually should have been filed.

(f) *General exemptions*— (1) *Central Intelligence Agency (CIA).* The Department of the Navy is not authorized to establish an exemption for records maintained by the CIA under subsection (j)(1) of 5 U.S.C. 552a.

(2) *Law enforcement.* (i) The general exemption provided by subsection (j)(2) of 5 U.S.C. 552a may be established to protect criminal law enforcement records maintained by Department of the Navy.

(ii) To be eligible for the (j)(2) exemption, the system of records must be maintained by an element that performs, as one of its principal functions, the enforcement of criminal laws. The Naval Investigative Service, Naval Inspector General, and military police activities qualify for this exemption.

(iii) Criminal law enforcement includes police efforts to detect, prevent, control, or reduce crime, or to apprehend criminals, and the activities of prosecution, court, correctional, probation, pardon, or parole authorities.

(iv) Information that may be protected under the (j)(2) exemption includes:

(A) Information compiled for the purpose of identifying criminal offenders and alleged criminal offenders consisting of only identifying data and notations of arrests; the nature and disposition of criminal charges; and sentencing, confinement, release, parole, and probation status;

(B) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and

(C) Reports identifiable to an individual, compiled at any stage of the enforcement process, from arrest, apprehension, indictment, or preferral of charges through final release from the supervision that resulted from the commission of a crime.

(v) The (j)(2) exemption does not apply to:

(A) Investigative records maintained by a naval activity having no criminal law enforcement duties as one of its principle functions, or

(B) Investigative records compiled by any element concerning individual's suitability, eligibility, or qualification for duty, employment, or access to classified information, regardless of the principle functions of the naval activity that compiled them.

(vi) The (j)(2) exemption established for a system of records maintained by a criminal law enforcement activity cannot protect law enforcement records incorporated into a nonexempt system of records or any system of records maintained by an activity not principally tasked with enforcing criminal laws. All system managers, therefore, are cautioned to comply strictly with Department of the Navy regulations or instructions prohibiting or limiting the incorporation of criminal law enforcement records into systems other than those maintained by criminal law enforcement activities.

(g) *Specific exemptions.* Specific exemptions permit certain categories of records to be exempted from specific

provisions of 5 U.S.C. 552a. Subsections (k)(1)-(7) of 5 U.S.C. 552a allow exemptions for seven categories of records. To be eligible for a specific exemption, the record must meet the corresponding criteria.

Note: Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without an established exemption rule.

(1) (k)(1) exemption: Information properly classified under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program" and E.O. 12356, in the interest of national defense or foreign policy.

(2) (k)(2) exemption: Investigatory information (other than that information within the scope of § 701.113(f)(2) compiled for law enforcement purposes. If maintaining the information causes an individual to be ineligible for or denied any right, benefit, or privilege that he or she would otherwise be eligible for or entitled to under Federal law, then he or she shall be given access to the information, except for the information that would identify a confidential source (see § 701.113(h), "confidential source"). The (k)(2) exemption, when established, allows limited protection on investigative records maintained for use in personnel and administrative actions.

(3) (k)(3) exemption: Records maintained in connection with providing protective services to the President of the United States and other individuals under 18 U.S.C. 3056.

(4) (k)(4) exemption: Records required by Federal law to be maintained and used solely as statistical records that are not used to make any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(5) (k)(5) exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. (See § 701.113(h), "confidential source"). This exemption allows protection of confidential sources in background investigations, employment inquiries, and similar inquiries used in personnel screening to determine suitability, eligibility, or qualifications.

(6) (k)(6) exemption: Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal or military service if the disclosure would compromise the objectivity or fairness of the testing or examination process.

(7) (k)(7) exemption: Evaluation material used to determine potential for promotion in the military services, but only to the extent that disclosure would reveal the identity of a confidential source. (See § 701.113(h), "confidential source".)

(h) *Confidential Source.* Promises of confidentiality are to be given on a limited basis and only when essential to obtain the information sought. Establish appropriate procedures for granting confidentiality and designate those categories of individuals authorized to make such promises.

§ 701.114 Enforcement actions.

(a) *Administrative remedies.* An individual who alleges he or she has been affected adversely by a naval activity's violation of 5 U.S.C. 552a or this subpart and subpart G of this part shall be permitted to seek relief from SECNAV through proper administrative channels.

(b) *Civil court actions.* After exhausting all administrative remedies, an individual may file suit in Federal court against a naval activity for any of the following acts:

(1) Denial of an amendment request. The activity head, or his or her designee wrongfully refuses the individual's request for review of the initial denial of an amendment or, after review, wrongfully refuses to amend the record;

(2) Denial of access. The activity wrongfully refuses to allow the individual to review the record or wrongfully denies his or her request for a copy of the record;

(3) Failure to meet recordkeeping standards. The activity fails to maintain an individual's record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual's rights, benefits, or privileges and, in fact, makes an adverse determination based on the record; or

(4) Failure to comply with Privacy Act. The activity fails to comply with any other provision of 5 U.S.C. 552a or any rule or regulation promulgated under 5 U.S.C. 552a and thereby causes the individual to be adversely affected.

(c) *Criminal penalties.* Subsection (i)(1) of 5 U.S.C. 552a authorizes three criminal penalties against individuals for violations of its provisions. All three are misdemeanors punishable by fines of $5,000.

(1) Wrongful disclosure. Any member or employee of Department of the Navy who, by virtue of his or her employment or position, has possession of or access to records and willfully makes a disclosure knowing that disclosure is in violation of 5 U.S.C. 552a or this subpart and subpart G of this part.

(2) Maintaining unauthorized records. Any member or employee of Department of the Navy who willfully maintains a system of records for which a notice has not been published under periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances."

(3) Wrongful requesting or obtaining records. Any person who knowingly and willfully requests or obtains information concerning an individual under false pretenses.

§ 701.115 Computer matching program.

(a) *General.* 5 U.S.C. 552a and this subpart and subpart G of this part are applicable to certain types of computer matching, i.e., the computer comparison of automated systems of records. There are two specific kinds of matching programs that are fully governed by 5 U.S.C. 552a and this subpart and subpart G of this part:

(1) Matches using records from Federal personnel or payroll systems of records;

(2) Matches involving Federal benefit programs to accomplish one or more of the following purposes:

(i) To determine eligibility for a Federal benefit.

(ii) To comply with benefit program requirements.

(iii) To effect recovery of improper payments or delinquent debts from current or former beneficiaries.

(b) The record comparison must be a computerized one. Manual comparisons are not covered, involving records from two or more automated systems of records (i.e., systems of records maintained by Federal agencies that are subject to 5 U.S.C. 552a); or a Department of the Navy automated systems of records and automated records maintained by a non-Federal agency (i.e., State or local government or agent thereof). A covered computer matching program entails not only the actual computerized comparison, but also preparing and executing a written agreement between the participants, securing approval of the Defense Data Integrity Board, publishing a matching notice in the Federal Register before the match begins, ensuring that investigation and due process are completed, and taking ultimate action, if any.

Subpart G - Privacy Act Exemptions

§ 701.116 Purpose.

Subparts F and G of this part contain rules promulgated by the Secretary of

the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and subpart F, § 701.113, to exempt certain systems of Department of the Navy records from specified provisions of 5 U.S.C. 552a.

§ 701.117 Exemption for classified records.

All systems of records maintained by the Department of the Navy shall be exempt from the requirements of the access provision of the Privacy Act (5 U.S.C. 552a(d)) under the (k)(1) exemption, to the extent that the system contains information properly classified under E.O. 12356 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

§ 701.118 Exemptions for specific Navy record systems.

(a) *System Identifier and Name:* N01070–9, White House Support Program.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (3), and (5).

Reasons: Exempted portions of this system contain information which has been properly classified under E.O. 12356, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(b) *System Identifier and Name:* N01131–1, Officer Selection and Appointment System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1), (5), (6), and (7).

Reasons: Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(c) *System Identifier and Name:* N01133–2, Recruiting Enlisted Selection System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1), (5), (6), and (7).

Reasons: Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(d) *System Identifier and Name:* N01640–1, Individual Correctional Records.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reason: Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(e) *System Identifier and Name:* N01754–3, Navy Child Development Services Program.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

Authority: 5 U.S.C. 552a(k)(2).

Reasons: Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recrimination, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(f) *System Identifier and Name:* N03834–1, Special Intelligence Personnel Access File.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k) (1) and (5).

Reasons: Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(g) *System Identifier and Name:* N04060–1, Navy and Marine Corps Exchange Security Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(h) *System Identifier and Name:* N04385–1, IG Investigatory System.

Exemption: Portions of this system or records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j) (2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, the orderly administration of justice, and might enable suspects to avoid detection and apprehension. Disclosures of this information could result in the concealment, destruction, or fabrication of evidence, and possibly jeopardize the safety and well being of informants, witnesses and their families. Such disclosures could also reveal and render ineffectual investigatory techniques and methods and sources of information and could result in the invasion of the personal privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reasons therefore, necessitate the exemption of this system of records from the provisions of the other cited sections of 5 U.S.C. 552a.

(i) *System Identifier and Name:* N04385–2, Hotline Program Case Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (5), (6) and (7).

Reasons: Exempted portions of this system consist of information compiled for the purpose of investigations, including reports of informants and investigators. Such investigations may be associated with identifiable individuals. Disclosure of files in this system would interfere with orderly investigations, and possibly result in the concealment, destruction, or fabrication of evidence, and possibly jeopardize the safety and well-being of informants, witnesses and their families. Such disclosures could also reveal and render ineffectual investigatory techniques and methods and sources of information and could further result in the invasion of the personal privacy of individuals only incidentally related to an investigation. Depending on the nature of the complaint, records may contain information that: is currently and properly classified pursuant to E.O. and must be kept secret in the interest of national defense or foreign policy, is confidentially provided information located in investigatory records compiled for the purposed of enforcement of non-criminal law, relates to qualifications, eligibility, or suitability for Federal employment, is test or examination material used to determine qualifications for appointment or promotion in the Federal service, is confidentially provided information used to determine potential for promotion in the armed services.

(j) *System Identifier and Name:* N05300–3, Faculty Professional Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) and (H), and (f).

Authority: 5 U.S.C. 552a(k)(5).

Reasons: Exempted portions of this system contain information considered relevant and necessary to make a release determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(k) *System Identifier and Name:* N05354–1, Equal Opportunity Information Management System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1) and (5).

Reasons: Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(l) *System Identifier and Name:* N05520–1, Personnel Security Eligibility Information System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) and (I), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (5), and (7).

Reasons: Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide the information to the government under an express or implied promise of confidentiality.

(m) *System Identifier and Name:* N05520–4, NIS Investigative Files System.

Exemption (1): Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority (1): 5 U.S.C. 552a(j)(2).

Reason (1): Granting individuals access to information collected and maintained by this activity relating to the enforcement of criminal laws could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

Exemption (2): Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority (2): 5 U.S.C. 552a(k) (1), (3), (4), (5) and (6).

Reason (2): The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, would therefor present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony. Exempt portions of this system also contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record. The notice of this system of records published in the **Federal Register** sets forth the basic statutory or related authority for maintenance of the system.

The categories of sources of records in this system have been published in the **Federal Register** in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

This system of records is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

Exempt portions of this system containing screening board reports. Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigation Service Command. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the Special Agent Corps., i.e., those records constituting examination material used solely to determine individual qualifications for appointment in the Federal service.

(n) *System Identifier and Name:* N05520–5, Navy Joint Adjudication and Clearance System (NJACS).

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d)(1–5).

Authority: 5 U.S.C. 552a(k)(1) and (k)(5).

Reasons: Granting individuals access to information collected and maintained in this system of records could result in the disclosure of classified material; and jeopardize the safety of informants, and their families. Further, the integrity of the system must be ensured so that complete and accurate records of all adjudications are maintained. Amendment could cause alteration of the record of adjudication.

(o) *System Identifier and Name:* N05527–1, Security Incident System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), and (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation.The exemption of the individual's right of access to his or her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(p) *System Identifier and Name:* N05527–4, Naval Security Group Personnel Security/Access Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).Authority: 5 U.S.C. 552a(k)(1) through (k)(5).

Reasons: Exempt portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualification, eligibility or suitability for access to classified special intelligence information, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(q) *System Identifier and Name:* N05800–1, Legal Office Litigation/ Correspondence Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(1), and (f)(2), (3), and (4).

Authority: 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7).

Reasons: Subsection (d) because granting individuals access to information relating to the preparation and conduct of litigation would impair the development and implementation of legal strategy. Accordingly, such records are exempt under the attorney-client privilege. Disclosure might also compromise on-going investigations and reveal confidential informants. Additionally, granting access to the record subject would seriously impair the Navy's ability to negotiate settlements or pursue other civil remedies. Amendment is inappropriate because the litigation files contain official records including transcripts, court orders, investigatory materials, evidentiary materials such as exhibits, decisional memorandum and other case-related papers. Administrative due process could not be achieved by the "exparte" correction of such materials.

Subsection (e)(1) because it is not possible in all instances to determine

relevancy or necessity of specific information in the early stages of case development. What appeared relevant and necessary when collected, ultimately may be deemed unnecessary upon assessment in the context of devising legal strategy. Information collected during civil litigation investigations which is not used during subject case is often retained to provide leads in other cases or to establish patterns of activity.

Subsection (f)(2), (3), and (4) because this record system is exempt from the individual access provisions of subsection (d).

(r) *System Identifier and Name:* N05819–3, Naval Clemency and Parole Board Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(4), (d), (e)(4)(G), and (f).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflect items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

The exemption of the individual's right to access to portions of these records, and the reasons therefore, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(s) *System Identifier and Name:* N06320–2, Family Advocacy Program System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

Authority: 5 U.S.C. 552a(k)(2) and (k)(5).

Reasons: Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(t) *System Identifier and Name:* N12930–1, Human Resources Group Personnel Records.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(4)(G) and (H), and (f).

Authority: 5 U.S.C. 552a(k)(5) and (k)(6).

Reasons: Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would comprise the objectivity or fairness of the testing or examination process.

§ 701.119 Exemptions for Specific Marine Corps Record Systems.

(a) *System Identifier and Name:* MMN00018, Base Security Incident Reporting System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e) (2) and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and might enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(b) *System Identifier and Name:* MIN00001, Personnel and Security Eligibility and Access Information System.

Exemption: Portions of this system of records are exempt for the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), as applicable.

Reasons: Exempt portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

Exempt portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

Dated: October 28, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–27326 Filed 11–04–94; 8:45 am]

BILLING CODE 3810–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN39–2–6702; FRL–5102–4]

Clean Air Act Approval and Promulgation of Employee Commute Options Program; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule; removal.

SUMMARY: On August 18, 1994, (59 FR 42506) the United States Environmental Protection Agency (USEPA) approved a revision to the Indiana State Implementation Plan (SIP) for the Employee Commute Options (ECO) program without prior proposal. The rule approved an ECO program for the severe ozone nonattainment area that includes Lake and Porter Counties. The USEPA is removing this final rule due to the adverse comments received on this rule. In a subsequent final rule, USEPA will summarize and respond to the comments received and announce final rulemaking action on this requested Indiana SIP revision on ECO.

EFFECTIVE DATE: November 7, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illionois 60604.

FOR FURTHER INFORMATION CONTACT: Jessica Radolf, Environmental Scientist, Regulation Development Section, Regulation Development Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–3198.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: October 19, 1994.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by removing paragraph (c)(92).

[FR Doc. 94–27449; Filed 11–4–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 271

[FRL–5102–6]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for Final Authorization for revisions to its hazardous waste program under the Resource Conservation and Recovery Act. The Environmental Protection Agency (EPA) reviewed Louisiana's application and decided that its hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Louisiana's hazardous waste program revision subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Louisiana's application for the program revision is available for public review and comment.

DATES: This Final Authorization for Louisiana shall be effective on January 23, 1995 unless EPA publishes a prior Federal Register (FR) action withdrawing this Immediate Final Rule. All comments on Louisiana's program revision application must be received by the close of business December 22, 1994.

ADDRESSES: Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, phone (504) 765–0617 and EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 665–6444. Written comments, referring to Docket Number LA–95–1, should be sent to Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–8528.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268, and 270.

B. Louisiana

Louisiana initially received Final Authorization, effective February 7, 1985 (see 50 FR 3348), to implement its base hazardous waste management program. Louisiana received authorization for revisions to its program effective January 29, 1990 (see 54 FR 48889), and October 25, 1991 (see 56 FR 41958, and Corrections at 56 FR 51762). On September 22, 1994, Louisiana submitted a final complete program revision application for additional program approvals. Today, Louisiana is seeking approval of its program revision in accordance with § 271.21(b)(3).

In 1983, the Louisiana Legislature adopted Act 97, which amended and reenacted Louisiana Revised Statutes 30:1051 et seq., the Environmental Affairs Act. This Act created the Louisiana Department of Environmental Quality (LDEQ), which has lead agency jurisdictional authority for administering the RCRA Subtitle C program in the State.

EPA reviewed LDEQ's application, and made an immediate final decision that LDEQ's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Final Authorization for

the additional program modifications to the State. The public may submit written comments on EPA's final decision until December 22, 1994. Copies of LDEQ's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of LDEQ's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

Louisiana's program revision application includes State regulatory changes that are at least equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–262, 264, 265, 266 and 270, that were published in the **Federal Register** through June 30, 1987. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Dioxin Waste Listing and Management Standards, [50 FR 1978] January 14, 1985. (Checklist 14).	Louisiana Revised Statutes (LRS) 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §109- Empty Container.1–2, as amended October 20, 1994, effective October 20, 1994; LHWR §4901.A.2; Chapter 49, Appendix A, Table 10; §4901.B, Table 1; §4901.F; Chapter 49, Appendix A, Table 8; §4901 Appendix C; §4901.G, Table 6; §2317.A&B; §2723.A&B; §2917.A&B; §2523.A&B; §3105, Table 1; §3111.A.1; §4301.G; §4522.A&B; and §4534.A&B, all amended September 20, 1994, effective September 20, 1994; LHWR §2111.C&D; §525.J; §527.J; §531.H; and §533.J, all amended March 20, 1990, effective March 20, 1990; LHWR §517.I, and §523.G, both amended November 20, 1992, effective November 20, 1992.
2. HSWA Codification Rule; Small Quantity Generators [50 FR 28702] July 15, 1985. (Checklist 17A).	The changes addressed by this Checklist were superseded by RCRA Revision Checklist 23. LDEQ made the changes required by Checklist 23 rather than those addressed by this Checklist. LHWR do not recognize EPA's category of Conditionally Exempt Small Quantity Generators. Instead, all Small Quantity Generators (SQGs) in Louisiana are subject to the State's SQG regulations and most LHWR applicable to Generators other than SQGs. This makes the State's SQG regulations More Stringent than EPA's.
3. HSWA Codification Rule; Delisting [50 FR 28702] July 15, 1985. (Checklists 17B and 17B.1).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §105.M.1–5, as amended September 20, 1994, effective September 20, 1994.
4. HSWA Codification Rule; Household Waste (Resource Recovery Facilities), [50 FR 28702] July, 15, 1985. (Checklist 17C).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR, §105.D.10, as amended September 20, 1994, effective September 20, 1994.
5. HSWA Codification Rule; Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves, [50 FR 28702] July 15, 1985. (Checklist 17E).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4322, as amended March 20, 1990, effective March 20, 1990; LHWR 1503.B.7, as amended November 20, 1992, effective November 20, 1992.
6. HSWA Codification Rule; Liquids in Landfills I, [50 FR 28702] July 15, 1985 (Checklist 17F).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §533.H, as amended March 20, 1990, effective March 20, 1990; LHWR §4507, as amended March 20, 1984, effective March 20, 1984; LHWR §2515; §2515.A&B; §2515.E; and §2515.E.1–2, all amended September 20, 1994, effective September 20, 1994.
7. HSWA Codification Rule; Dust Suppression, [50 FR 28702] July 15, 1985. (Checklist 17G).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4139.B.3&4, as amended September 20, 1994, effective September 20, 1994.
8. HSWA Codification Rule; Double Liners, [50 FR 28702] July 15, 1985. (Checklist 17H).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4476, as amended March 20, 1990, effective March 20, 1990; LHWR §2903.A, and I-K; §4462.A-E; §2503.A, C-G, and K-M; §4512.A-E, all amended September 20, 1994, effective September 20, 2994.
9. HSWA Codification Rule; Ground-Water Monitoring, [50 FR 28702] July 15, 1985. (Checklist 17I).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §2521.C; §2911.E; §2905; §2305; and §3301.C, all amended September 20, 1994, effective September 20, 1994; LHWR §2505; §2507.C.3; §2907.C.4; and §2911.B.3, all amended March 20, 1984, effective March 20, 1984; and LHWR §2309.B.2, and §2521.B.3, both amended July 20, 1984, effective July 20, 1984.
10. HSWA Codification Rule; Cement Kilns, [50 FR 28702] July 15, 1985. (Checklist 17J).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4141.F.1–3 and §4141.D.1–6, all amended December 20, 1992, effective December 20, 1992; and LHWR §4105.C and 4901.D, both amended September 20, 1994, effective September 20, 1994.
11. HSWA Codification Rule: Fuel Labeling, [50 FR 28702] July 15, 1985. (Checklist 17K).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4141.F.1–3 and §4141.D.1–6, all amended December 20, 1992, effective December 20, 1992; and LHWR §4105.C and 4901.D, both amended September 20, 1994, effective September 20, 1994.
12. HSWA Codification Rule; Corrective Action, [50 FR 28702] July 15, 1985. (Checklist 17L).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §3301.A and §3322.A&B, both amended September 20, 1994, effective September 20, 1994; and LHWR §305.D.1.b and §305.D.2.h, both amended October 20, 1994, effective October 20, 1994.
13. HSWA Codification Rule; Pre-Construction Ban, [50 FR 27802] July 15, 1985. (Checklist 17M).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §303.H.1, as amended July 20, 1991, effective July 20, 1991; LHWR §303.H.3, as amended September 20, 1994, effective September 20, 1994.
14. HSWA Codification Rule; Permit Life, [50 FR 28702] July 15, 1985. (Checklist 17N).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §315, as amended September 20, 1994, effective September 20, 1994; and LHWR §323.B.2.d, as amended October 20, 1994, effective October 20, 1994.

Federal citation	State analog
15. HSWA Codification Rule; Omnibus Provision, [50 FR 28702] July 15, 1985. (Checklist 17O).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §311.E, as amended September 20, 1994, effective September 20, 1994.
16. Interim Status, [50 FR 28702] July 15, 1985. (Checklist 17P).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §501.C.2, as amended March 20, 1990, effective March 20, 1990; LHWR §501.A; §503; §4305.A.1&2; 4305.B-D, all amended October 20, 1994, effective October 20, 1994; LHWR §501.C.2, as amended March 20, 1991, effective March 20, 1991; and LHWR §4301.A-F; §309.J.2; §501.C.1., all amended September 20, 1994, effective September 20, 1994.
17. HSWA Codification Rule; Research and Development Permits, [50 FR 28702] July 15, 1985. (Checklist 17Q).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §329; §303.A.1, both amended September 20, 1994, effective September 20, 1994.
18. HSWA Codification Rule; Exposure Information, [50 FR 28702] July 15, 1985. (Checklist 17S).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §303.M and §303.P, both amended September 20, 1994, effective September 20, 1994.
19. Listing of TDI, TDA, and DNT Wastes, [50 FR 42936] October 23, 1985. (Checklist 18).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4901.C; §4901.F; Chapter 49, Appendix A, Tables 8–10; §4901.G, Table 6; and §3105, Table 1, all amended September 20, 1994, effective September 20, 1994.
20. Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces, [50 FR 49164] November 29, 1985, and [52 FR 11819], as amended on April 13, 1987. (Checklists 19 and 19.1).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §109, as amended October 20, 1994, effective October 20, 1994; LHWR §105.D.33.b; §4105.C.5; §4105.B.3, and 10–14; §3105.A.2; 4513.B; §4147.A-E, all amended September 20, 1994, effective September 20, 1994; and LHWR §4141.A-F, effective December 20, 1992, effective December 20, 1992.
21. Listing of Spent Solvents, [50 FR 53315] December 31, 1985, and [51 FR 2702] as amended on January 21, 1986. (Checklists 20 and 20.1).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4901.B, Table 1, as amended September 20, 1994, effective September 20, 1994.
22. Listing of EDB Waste, [51 FR 5327] February 13, 1986. (Checklist 21).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR Chapter 49, Appendix A, Tables 8–10; §4901.C, Table 2; §4901.G, Table 6, all amended September 20, 1994, effective September 20, 1994.
23. Listing of Four Spent Solvents, [51 FR 6537] February 25, 1986. (Checklist 22).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4901.B, Table 1; §4901.F, Table 4; §4901.G, Table 6; Chapter 49, Appendix A, Tables 8–10; and §3105, Table 1, all amended September 20, 1994, effective September 20, 1994.
24. Generator of 100 to 1000 kg Hazardous Waste, [51 FR 10146] March 24, 1986. (Checklist 23).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR, §105; §4901.F, Table 4; §303.E.1, all amended September 20, 1994, effective September 20, 1994; LHWR §109–Small Quantity Generator; §1109.E.1; §1109.E.7–9; §1307.I; §305.C.2, all amended October 20, 1994, effective October 20, 1994; and Louisiana Notification of Hazardous Waste Activity Form HW–1. LHWR do not recognize EPA's category of Conditionally Exempt Small Quantity Generators. Instead, all Small Quantity Generators (SQGs) in Louisiana are subject to the State's SQG regulations and most LHWR applicable to Generators other than SQGs. This makes the State's SQG regulations More Stringent than EPA's.
25. Codification Rule, Technical Correction (Paint Filter Test), [51 FR 19176] May 28, 1986. (Checklist 25).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §533.H, as amended March 20, 1990, effective March 20, 1990; LHWR §450Z, as amended March 20, 1984, effective March 20, 1984; LHWR §2515; §2515.A&B; §2515.E; and §2515.E.1–2, all amended September 20, 1994, effective September 20, 1994.
26. Biennial Report; Correction [51 FR 28556] August 8, 1986. (Checklist 30).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4361, as amended March 20, 1984, effective March 20, 1984; LHWR §1529.D.7, and 9–10, all amended September 20, 1994, effective September 20, 1994; Louisiana Notification of Hazardous Waste Activity Form HW–1.
27. Standards for Generators; Waste Minimization Certifications, [51 FR 25190] October 24, 1986. (Checklist 32).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; Louisiana Notification of Hazardous Waste Activity Form HW–1.
28. Listing of EBDC, [51 FR 37725] October 24, 1986. (Checklist 33).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4901.C; Chapter 49, Appendix A, Tables 8–10; §4901.G, Table 6, all amended September 20, 1994, effective September 20, 1994.

Louisiana is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that LDEQ's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, LDEQ is granted Final Authorization to operate its hazardous waste program as revised. Louisiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Louisiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize LDEQ's program and for incorporation by reference of those provisions of its Statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart L until a later date.

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Louisiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a),.3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 27, 1994.

Allyn M. Davis,

Acting Regional Administrator.

[FR Doc. 94–27544 Filed 11–4–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7098

[AZ–930–1430–01; AZA–28652]

Partial Revocation of Presidential Proclamation of March 21, 1917; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes the Presidential Proclamation of March 21, 1917, insofar as it affects 375.74 acres of public land withdrawn for classification purposes. The withdrawal is no longer needed, and the revocation is needed to permit disposal of the land. This action will open the land to surface entry and nonmetalliferous mining, unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: December 7, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988) as amended, it is ordered as follows:

1. The Presidential Proclamation of March 21, 1917, which withdrew land for classification purposes, is hereby revoked insofar as it affects the following described land:

Gila and Salt River Meridian

T. 1 N., R. 15 E.,
Sec. 31, lots 1 to 4, inclusive, N½NE¼, and E½W½.

The area described contains 375.74 acres in Gila County.

2. At 10 a.m. on December 7, 1994, the land will be opened to settlement, location, sale, or entry under the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 7, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on December 7, 1994, the land will be opened to location and entry under the United States nonmetalliferous mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 21, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–27422; Filed 11–4–94; 8:45 am]

BILLING CODE 4310–32–P

43 CFR Public Land Order 7099

[ID–943–1430–01; IDI–15685 01]

Partial Revocation of Geological Survey Order Dated May 19, 1950; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Geological Survey order insofar as it affects 74.98 acres of public land withdrawn for the Bureau of Land Management's Powersite Classification No. 408. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through exchange. This action will open the land to surface entry. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Geological Survey Order dated May 19, 1950, which withdrew public land for the Bureau of Land Management's Powersite Classification No. 408, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 55 N., R. 2 E.,
Sec. 13, NE¼NE¼.
T. 56 N., R. 2 E.,
Sec. 29, lot 13.

The area described contains 74.98 acres in Bonner County.

2. At 9 a.m. on December 7, 1994, the land described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 7, 1994, shall be considered as simultaneously filed at that time.

Dated: October 21, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–27423; Filed 11–4–94; 8:45 am]

BILLING CODE 4310–GG–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 24

[GEN Docket No. 90–314, RM–7140, RM–7175, RM–7618; FCC 94–265]

New Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on reconsideration.

SUMMARY: By this action the Commission addressed ten petitions for reconsideration that seek revisions to various service rules governing broadband Personal Communications Services (PCS). The changes adopted are limited to revisions in the cross-ownership restrictions, that will serve to expand participation in the broadband PCS spectrum auction scheduled to commence December 5, 1994, and to revisions of technical rules governing PCS radio signal transmission. The expanded auction participation will serve to increase the number of potential PCS licensees, while the latter, technical changes will enhance the flexibility of equipment manufacturers in designing products that comply with Commission regulations, and so reduce the ultimate cost of service to PCS consumers.

EFFECTIVE DATE: Amendments to 47 CFR 24.204, are November 7, 1994. Other amendments adopted in this order shall be effective December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Stanley P. Wiggins, Common Carrier Bureau at (202) 418–1322.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Memorandum Opinion and Order in GEN Docket No. 90–314, RM–7140, RM–7175, RM–7618, adopted October 19, 1994, and released October 19, 1994. By this action the Commission addresses ten petitions for reconsideration of Amendment of the Commission's Rules to Establish New Personal Communications Services, *Memorandum Opinion and Order*, 59 Fed. Reg. 32820 (June 24, 1994), *erratum*, GEN Docket No. 90–314, Mimeo No. 44006 (released July 22, 1994) (hereinafter jointly "*Broadband PCS Reconsideration*"). The petitions were filed by: the Association of Maximum Service Television *et al*; the Association of Independent Designated Entities (AIDE); Cellsat, Inc.; the Cellular Telecommunications Industry Association; Comcast Corporation; Omnipoint Corporation; the Personal Communications Industry Association; Point Communications Company; Puerto Rico Telephone Company; Spatial Communications, Inc. and ArrayComm, Inc. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The full text of this decision also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Summary of Order

By this order, the Commission amends in minor respects its broadband Personal Communications Services ("PCS") regulatory structure to better achieve the four primary goals of this proceeding: competitive delivery, a diverse array of services, rapid deployment, and wide-area coverage. The Commission takes this action in response to ten petitions for reconsideration or clarification of policies and rules adopted in the *Broadband PCS Reconsideration* order. The Commission denies those petitions in major part because they principally raise issues the Commission has considered at length in previous orders in this Docket.

By this action, the Commission modifies existing rules in only limited respects. First, the Commission permits entities with non-controlling, attributable cellular interests to bid on "in-market" 30 MHz PCS licenses, conditioned on post-auction compliance with existing cellular/PCS cross-ownership rules within 90 days of PCS license grant. Second, the Commission clarifies the requirements for isochronous devices operating in the 1920–1930 MHz sub-band. Third, the Commission clarifies its rule governing broadband PCS emission limits. Fourth, the Commission makes certain housekeeping amendments to the Table of Frequency Allocations.

In denying the reconsideration petitions in principal part, the Commission: (1) Affirms existing license eligibility and ownership attribution rules in principal part; (2) denies without prejudice a proposal to require PCS licenses to share the costs of relocating microwave licensees from the 1850–1990 MHz PCS Band; (3) declines to change PCS service area definitions; (4) affirms an existing rule that divides Puerto Rico into two Basic Trading Areas for licensing purposes; (5) declines a request to interpret the meaning of correspondence between AIDE and Rand McNally Corporation regarding the latter's agreement to license the terms Metropolitan Trading Area and Basic Trading Area; (6) determines that the question whether to impose Open Network Architecture regulation on PCS licensees is outside the scope of this proceeding; (7) denies requests to modify the emission mask for licensed PCS bands and to make other changes to technical PCS rules; (8) determines that it is unnecessary to impose special technical requirements on PCS licensees in Block C in order to prevent their operations from interfering with adjacent Broadcast Auxiliary Service licensees; and (9) defers to a pending Mobile Satellite Service (MSS) proceeding the question whether to establish a secondary allocation of MSS in PCS Blocks F and C (1970–1990 MHz).

Ordering Clauses

Accordingly, it is ordered, that the petitions for reconsideration addressed in this order *are granted* to the extent described above, and *Denied* in all other respects.

It is further ordered, the Parts 2, 15, and 24 of the Commission's Rules *are amended* as specified below, effective 30 days after publication in the **Federal Register**, except that amendments to 47 CFR 24.204 as specified below *shall be effective* immediately upon publication in the **Federal Register**. This action is taken pursuant to Sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

List of Subjects

47 CFR Part 2

Frequency allocation and radio treaty matters; General rules and regulations, Radio.

47 CFR Part 15

Communications equipment, Radio, Radio frequency devices.

47 CFR Part 24

Communication common carriers, Personal communications services, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary

Final Rules

47 CFR Parts 2, 15, and 24 are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of this Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303 and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. In the 1850–1990 MHz band, revise columns 4 through 7;

b. In the 2110–2200 MHz band, revise columns 4 through 7 to read as follows:

§ 2.106 Table of Frequency Allocations

* * * * * * *

International table			United States table		FCC use designators	
Region 1-allocation MHz	Region 2-allocation MHz	Region 3-allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
			1850–1990	1850–1990 FIXED MOBILE	PERSONAL COMMUNICATIONS SERVICES (24). PRIVATE OPERATIONAL-FIXED MICROWAVE (94). RADIO FREQUENCY DEVICES (15)	
			US331	US331.		
			*	*	*	*
			2110–2200	2110–2150 FIXED MOBILE	DOMESTIC PUBLIC FIXED (21). PRIVATE OPERATIONAL-FIXED MICROWAVE (94).. PUBLIC MOBILE (22)	EMERGING TECHNOLOGIES.
				US111 US252 NG 23 NG153		
				2150–2160 FIXED	MULTI-POINT DISTRIBUTION (21). PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	
				2160–2200 FIXED MOBILE	DOMESTIC PUBLIC FIXED (21). PRIVATE OPERATIONAL-FIXED MICROWAVE (94). PUBLIC MOBILE (22)	EMERGING TECHNOLOGIES.
			US111 US252	NG 23 NG153.		

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

Authority: Secs. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.323 is amended by revising paragraphs (c)(1), (c)(5), and (e) to read as follows:

§ 15.323 Specific requirements for isochronous devices operating in the 1920–1930 MHz sub-band.

* * * * *

(c) * * *

(1) Immediately prior to initiating transmission, devices must monitor the combined time and spectrum windows in which they intend to transmit for a period of at least 10 milliseconds for systems designed to use a 10 milliseconds or shorter frame period or at least 20 milliseconds for systems designed to use a 20 milliseconds frame period.

* * * * *

(5) If access to spectrum is not available as determined by the above, and a minimum of 40 duplex system access channels are defined for the system, the time and spectrum windows with the lowest power level below a monitoring threshold of 50 dB above the thermal noise power determined for the emission bandwidth may be accessed. A device utilizing the provisions of this paragraph must have monitored all access channels defined for its system

within the last 10 seconds and must verify, within the 20 milliseconds (40 milliseconds for devices designed to use a 20 milliseconds frame period) immediately preceding actual channel access that the detected power of the selected time and spectrum windows is no higher than the previously detected value. The power measurement resolution for this comparsion must be accurate to within 6 dB. No device or group of cooperating devices located within 1 meter of each other shall occupy more than three 1.25 MHz channels during any frame period. Devices in an operational state that are utilizing the provisions of this section are not required to use the search provisions of paragraph (b) of this section.

* * * * *

(e) The frame period (a set of consecutive time slots in which the position of each time slot can be identified by reference to a synchronizing source) of an intentional radiator operating in these sub-bands shall be 20 milliseconds or 20 milliseconds/X where X is a positive whole number. Each device that implements time division for the purposes of maintaining a duplex connection on a given frequency carrier shall maintain a frame repetition rate with a frequency stability of at least 50 parts per million (ppm). Each device which further divides access in time in order to support multiple communication links on a given frequency carrier shall maintain a frame repetition rate with a frequency stability of at least 10 ppm. The jitter (time-related, abrupt, spurious variations in the duration of the frame interval) introduced at the two ends of such a communication link shall not exceed 25 microseconds for any two consecutive transmissions. Transmissions shall be continuous in every time and spectrum window during the frame period defined for the device.

* * * * *

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. Sections 154, 301, 302, 303, and 332, unless otherwise noted.

2. Section 24.204 is amended by revising the introductory text of paragraph (f), and by adding a new sentence at the end of paragraph (f)(3)(i), to read as follows:

§ 24.204 Cellular eligibility.

* * * * *

(f) *Cellular Divestiture.* Parties holding controlling or attributable ownership interests in cellular licenses may be a party to a broadband PCS application (i.e., have a controlling or attributable interest in a broadband PCS applicant), and such PCS applicant will be eligible for more than one 10 MHz broadband PCS license and/or MHz PCS license(s) pursuant to the divestiture procedures set forth in paragraphs (f) (1) through (3) of this section; Provided, however, that these divestiture procedures shall be available only to: parties with controlling or attributable ownership interests in cellular licenses where the CGSA(s) covers 20 percent or less of the PCS service area population; and parties with non-controlling attributable interests in cellular licenses, regardless of the degree to which the CGSA(s) covers the PCS service area population. For purposes of this paragraph, a "non-controlling attributable interest" is one in which the holder has less than a fifty (50) percent voting interest and there is an unaffiliated single holder of a fifty (50) percent or greater voting interest.

* * * * *

(3) * * *

(i) * * * The trustee must divest the property within six months from grant of license.

* * * * *

3. Section 24.238 is revised to read as follows:

§ 24.238 Emission limits.

(a) On any frequency outside a licensee's frequency block, the power of any emission shall be attenuated below the transmitter power (P) by at least 43 + 10 log (P) dB.

(b) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(c) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the licensee's frequency block edges, both upper and lower, as the design permits.

(d) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

(e) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

[FR Doc. 94–27558 Filed 11–4–94; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–321; RM–8409]

Radio Broadcasting Services; Ocean Isle Beach, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Wednesday, October 12, 1994 (59 FR 51518).

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Chappelle, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the close window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on October 12, 1994 of the final regulations, which were the subject of FR Doc. 94–25088 is corrected as follows:

On page 51518, in the third column, in the **DATES** section, the close-window period for filing applications should be "December 23, 1994" in lieu of "December 7, 1994".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27380 Filed 11–4–94; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–22; RM–8438]

Radio Broadcasting Services; Jackson, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Thursday, October 13, 1994 (59 FR 51866).

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Chappelle, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the close-window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on October 13, 1994 of the final regulations, which were the subject of FR Doc. 94–25308 is corrected as follows:

On page 51866, in the third column, in the **DATES** section, the close window period for filling applications should be "December 23, 1994" in lieu of "December 7, 1994".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27381 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 73–275; RM–8373]

Radio Broadcasting Services; Pioche, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Thursday, October 13, 1994 (59 FR 51868).

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Chappelle, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the close window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on October 13, 1994, of the final regulations, which were the subject of FR Doc. 94–25307 is corrected as follows:

On page 51868, in the second column, in the **DATES** section, the close window period for filing applications should be "December 23, 1994" in lieu of "December 7, 1994".

Federal Communications Commission.

William F. Caton;

Acting Secretary.

[FR Doc. 94–27383 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–248; RM–8105]

Radio Broadcasting Services; Southern Shores, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Thursday, October 13, 1994 (59 FR 51868).

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Chappelle, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the close window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on October 13, 1994 of the final regulations, which were the subject of FR Doc. 94–25306 is corrected as follows:

On page 51868, in the third column, in the **DATES** section, the close window period for filing applications should be "December 23, 1994" in lieu of "December 7, 1994".

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 94–27382 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–83; RM–8494]

Radio Broadcasting Services; Cascade, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 285C to Cascade, Montana, as that community's first local FM broadcast service in response to a petition filed by Stephen D. Dow. Canadian concurrence has been received for this allotment at coordinates 47–28–43 and 111–27–13. There is a site restriction 29.7 (18.4 miles) kilometers northeast. With this action this proceeding is terminated.

DATES: Effective December 16, 1994. The window period for filing applications for Channel 285C at Cascade, Montana, will open on December 16, 1994, and close on January 17, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 94–83, adopted October 20, 1994, and released November 1, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Cascade, Channel 285C.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–27329 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–318; R–8364]

Radio Broadcasting Services; Clinton, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Thunderbolt Broadcasting Company, Inc., allots Channel 271C3 at Clinton, Kentucky, as that community's first local aural transmission service. See 59 FR 2343, January 14, 1994. Channel 271C3 can be allotted to Clinton in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (7.0 miles) northeast to avoid short-spacings to Station WCMT–FM, Channel 269A, Martin, Tennessee, Station KIYS (formerly KJBR), Channel 270C, Jonesboro, Arkansas, and Station KDEX–FM, Channel 272A, Dexter, Missouri. The coordinates for Channel 271C3 at Clinton are North Latitude 36–44–30 and West Longitude 88–54–30. With this action, this proceeding is terminated.

DATES: Effective: December 16, 1994. The window period for filing applications for Channel 271C3 at Clinton, Kentucky, will open on December 16, 1994, and close on January 17, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–318, adopted Oct. 20, 1994, and released November 1, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Clinton, Channel 271C3.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–27330 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 59, No. 214
Monday, November 7, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1011

[DA–95–02]

Milk in the Tennessee Valley Marketing Area; Proposed Temporary Revision of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rule.

SUMMARY: This document invites comments on a proposal to reduce the supply plant shipping requirement of the Tennessee Valley Federal milk order (Order 11) for the months of March through July 1995. The proposed action was requested by Armour Food Ingredients Company (Armour), which operates a proprietary supply plant pooled under Order 11. Armour contends the action is necessary to prevent the uneconomical movement of milk and to ensure that producer milk associated with the market in the fall will continue to be pooled in the spring and summer months.

DATES: Comments are due no later than December 7, 1994.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1011.7(b) of the order, the proposed revision of certain provisions of the order regulating the handling of milk in the Tennessee Valley marketing area is being considered for the period of March 1, 1995, through July 31, 1995.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 30th day after publication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed revision would reduce the supply plant shipping requirement from 40 to 30 percent for the period of March through July 1995. The Tennessee Valley order requires that a supply plant ship a minimum of 60 percent of the total quantity of milk physically received at the supply plant during the months of August through November, January, and February, and 40 percent in each of the other months. The order also provides authority for the Director of the Dairy Division to increase or decrease this supply plant shipping requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments of milk or to prevent uneconomic shipments.

Armour states that it would have to make uneconomical shipments of milk to meet the 40 percent supply plant shipping requirement to continue its pool status. Additionally, the proponent states that the 40 percent requirement could jeopardize the continued association of producers who have supplied the Order 11 market in the fall.

Armour anticipates that marketing conditions in 1995 will mirror those in 1993 and 1994, when the shipping percentage was also reduced. It expects milk supplies to be adequate to meet the Class I needs of the market.

In view of the current supply and demand relationship, it may be necessary to reduce the supply plant shipping percentage as proposed to provide for the efficient and economic marketing of milk during the months of March 1 through July 31, 1995.

List of Subjects in 7 CFR Part 1011

Milk marketing orders.

The authority citation for 7 CFR Part 1011 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: November 1, 1994.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 94–27522 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AD42

1995 Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage used in administering the acreage reduction program (ARP) for the 1995 crop of extra long staple (ELS) cotton. This action is required by section 103(h)(5) of the Agricultural Act of 1949 as amended (the 1949 Act).

DATES: Comments must be received on or before November 18, 1994 in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Wayne Bjorlie, Farm Services Agency, U.S. Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Broussard, Farm Service Agency, USDA, room 3758–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–9222.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by the OMB under the provisions of 44 U.S.C. 35.

Request for Public Comment

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 103(h)(5) of the 1949 Act, an ARP may be established for the 1995 crop of ELS cotton if it is determined that the total supply of ELS cotton, in the absence of an ARP, will be excessive, taking into account the need for an adequate carry-over to maintain reasonable and stable prices and to meet a national emergency.

Land diversion payments also may be made to producers of ELS cotton, whether or not an ARP for ELS cotton is in effect, if needed to assist in adjusting the total national acreage of ELS cotton to desirable goals. A paid land diversion has not been considered because, given the existing supply/use situation, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (including a zero percentage reduction) to the ELS crop acreage base for each ELS cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted acreage for the farm are ineligible for CCC ELS cotton price support loans and payments with respect to that farm.

Based on 1995 supply/use estimates as of September 1994, four options are considered. However, because of changes in the 1995 supply/use situation that may develop between now and the announcement date for the acreage reduction percentage, the actual percentage may be different from the options discussed in this proposed rule.

The 1995 ARP options considered are:

Option 1. 10-percent acreage reduction percentage.

Option 2. 15-percent acreage reduction percentage.

Option 3. 20-percent acreage reduction percentage.

Option 4. 25-percent acreage reduction percentage.

The estimated impacts of the ARP options are shown in the following table.

EXTRA LONG STAPLE COTTON SUPPLY/DEMAND ESTIMATES

Item	Option 1	Option 2	Option 3	Option 4
Acreage Reduction Percentage (%)	10	15	20	25
Participation (%)	50	45	40	35
Planted Acres (thousand)	190	185	180	175
Production (thousand bales)	386	376	365	355
Domestic Use (thousand bales)	75	75	75	75
Exports (thousand bales)	345	340	335	330
Ending Stocks (thousand bales)	128	123	117	112
Stocks to Use Ratio	0.304	0.296	0.285	0.276
Deficiency Payments ($ million)	0	0	0	0

Accordingly, comments are requested with respect to the 1995 ARP for ELS cotton. The final acreage reduction percentage will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b-3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended as follows by:

A. Revising paragraphs (a)(5)(iii) and (a)(5)(iv),

B. Adding paragraph (a)(5)(v),

C. Adding paragraph (d)(5):

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(5) * * *

(iii) 1993 ELS cotton, 20 percent;

(iv) 1994 ELS cotton, 15 percent; and

(v) 1995 ELS cotton shall be within the range of 10 to 25 percent, as determined and announced by CCC.

* * * * *

(d) * * *

(5) For the 1995 crop:

(i) - (iii) [Reserved]

(iv) Shall not be made available to producers of ELS cotton.

* * * * *

Signed at Washington, DC, on November 1, 1994.

Richard E. Rominger,

Executive Vice President Commodity Credit Corporation.

[FR Doc. 94–27539 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 900

Hearings on the Federal Home Loan Bank (FHLBank) System and Recommendations for FHLBank Legislation

AGENCY: Federal Housing Finance Board.

ACTION: Notice of public hearing and request for comment.

SUMMARY: The Federal Housing Finance Board (Finance Board) is hereby announcing a public hearing and requesting comment on the FHLBank System's (System) contribution to housing and community lending, the FHLBank System's potential for improving its support of community lenders and recommendations for legislation to modernize the FHLBank System.

DATES: The public hearing will be held on December 8 and December 9, 1994, beginning at 9 a.m. on both days. Written requests to participate in the hearing must be received no later than November 16, 1994.

ADDRESSES: The hearing will be held at the Office of Thrift Supervision Amphitheater, 1700 G Street NW, Washington, DC 20552. Send requests to participate in the hearing, written statements of hearing participants, or other written comments to Elaine L. Baker, Executive Secretariat, Federal Housing Finance Board, 1777 F Street NW, Washington, DC 20006. The submissions may be mailed, hand delivered or sent by facsimile transmission to (202) 408–2895. Submissions must be received by 5 p.m. on the day they are due in order to be considered received by the Finance Board. Late filed, misaddressed, or misidentified submissions may affect eligibility to participate in the hearing.

FOR FURTHER INFORMATION CONTACT: Kerrie Ann Sullivan, External Affairs Specialist, (202) 408–2515, or K. Scott Baker, Manager, Congressional Affairs, (202) 408–2980. Federal Housing Finance Board, 1777 F Street NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Pursuant to a request by Nicolas P. Retsinas, the Department of Housing and Urban Development Secretary's Designee to the Finance Board, the 12 Federal Home Loan Banks conducted public forums in August and September of 1994 to seek comment on three topics: (1) The contribution of the System and its members to housing and community development lending; (2) the capacity for the System to support community lenders and community-based lending; and, (3) appropriate System governance structure. Each FHLBank public forum discussed several related questions:

(1) How can the System facilitate housing and community development lending through the existing network of community-based lenders?

(2) How should the community development mission of the System be defined with regard to the types of lending and collateral requirements compatible with the safety and soundness requirements of the System?

(3) How is the changing membership base affecting the System?

(4) Building on the success of the Affordable Housing and the Community Investment programs, how can we demonstrate the contribution that member institutions make through the regular advances program.

(5) What type of System governance structure would enable the System to better realize its public purpose potential, while ensuring continued safety and soundness?

The Finance Board is interested in the views of System members, community groups, trade associations, government sponsored enterprises, federal and state agencies and others on the topics addressed in the 12 FHLBank forums. To assist interested persons in responding, summaries of the sessions held by the FHLBanks will be made available prior to the public hearing. Requests for this material may be made by writing or calling (refer to the information listed in the **ADDRESSES** portion of this notice). Most of these issues were also addressed in five reports on the FHLBank System submitted to Congress pursuant to the Housing and Community Development Act of 1992. Congressionally-mandated reports were submitted by the Finance Board, the Department of Housing and Urban Development, the General Accounting Office, the Congressional Budget Office and a FHLBank Shareholder Study Committee.

Additionally, the Finance Board invites testimony regarding potential FHLBank legislation. Specifically, the Finance Board welcomes testimony on what should be contained in a comprehensive FHLBank legislative package addressing the following four areas: (1) The structure of FHLBank capital; (2) the statutory definition of the FHLBank System's mission; (3) FHLBank membership and borrowing requirements; and, (4) the appropriate structure of FHLBank System regulation and governance.

On December 8, the Finance Board hearing will be directed at the topics that were the subject of the FHLBank public forums and on the issues to be addressed in legislation. On December 9, the Finance Board will arrange panels on each of four specific legislative issue areas. Witnesses should indicate a preference for either testifying during the more general discussion on December 8 or identify a specific topic panel on which they would like to participate on December 9.

Persons wishing to participate in these hearings should send a written

request to the address listed in the ADDRESSES portion of this notice, to be received no later than November 16, 1994. A request to participate in the hearing must include the following information:

(A) The name, title, address, business telephone and fax number of the participant;

(B) The entity or entities that the participant will be representing;

(C) An indication as to the witnesses' preference to testify on the more general topics of December 8 or on one of the following specific panels planned for December 9: (1) The structure of FHLBank capital; (2) the statutory definition of the FHLBank's mission; (3) statutory FHLBank membership and borrowing requirements; and, (4) the appropriate structure of FHLBank regulation and governance.

Depending on the number of requests received, participants may be limited in the length of their oral presentations. However, the Finance Board will provide time at the end of the December 8 hearing for brief general comments from the public. The Finance Board will notify participants of the date and time scheduled for their presentation. In establishing panels of participants for presentations, the Finance Board reserves the right to limit the number of participants and to select, at its discretion, those persons who may make oral presentations if more requests are received for participation than may be accommodated in the time available.

Participants will be required to submit written statements in advance of the hearing date. These written statements should incorporate the major points to be presented at the hearing and should be accompanied by an executive summary of no more than three to five pages. Written statements must be received no later than November 28, 1994, and should be sent to the address listed in the ADDRESSES portion of this notice.

By the Federal Housing Finance Board.

Nicolas P. Retsinas,

HUD—Secretary Designee to the Board.

[FR Doc. 94–27451 Filed 11–4–94; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–157–AD]

Airworthiness Directives; British Aerospace Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model Avro 146–RJ series airplanes. This proposal would require inspections to detect cracking of the upper main fitting of the nose landing gear (NLG), and replacement or repair of cracked parts. This proposal is prompted by reports of cracking of the upper main fitting of the NLG. The actions specified by the proposed AD are intended to prevent failure of the main fitting, which could lead to collapse of the NLG during landing.

DATES: Comments must be received by January 4, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, ANM–113, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–157–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 23, 1993, the FAA issued AD 93–17–04, amendment 39–8674 (58 FR 47036, September 7, 1993), applicable to all British Aerospace Model BAe 146 series airplanes, to require repetitive eddy current or ultra high sensitivity penetrant inspections to detect cracking of the upper main fitting of the nose landing gear (NLG), and replacement or repair of cracked parts. That action was prompted by reports of cracking in the main fittings of the NLG. The actions required by that AD are intended to prevent failure of the main fitting, which could lead to collapse of the NLG during landing.

AD 93–17–04 is applicable only to British Aerospace Model BAe 146 series airplanes. Since issuance of that AD, however, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has advised that additional airplanes may be subject to the same unsafe condition addressed by the existing AD action. Further analysis has indicated that cracking of the upper main fitting of the

NLG may occur on all British Aerospace Model Avro 146–RJ series airplanes.

British Aerospace has issued Revision 2, dated July 10, 1993, of Service Bulletin S.B. 32–131. The inspection procedures described in this revision are identical to those described in Revision 1 of the service bulletin (which was referenced in AD 93–17–04). This revision only expands the effectivity listing to include additional airplanes. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive eddy current or ultra high sensitivity penetrant inspections, and replacement or repair of cracked parts. The actions would be required to be accomplished in accordance with the service bulletin described previously. This proposed rule would be applicable only to Model Avro 146–RJ series airplanes.

(Note: The FAA's normal policy is that when an AD requires a substantive change, such as a change (expansion) in its applicability, the "old" AD is superseded by removing it from the system and a new AD is added. In the case of this AD action, the FAA normally would have proposed superseding AD 93–17–04 to expand its applicability to include Model Avro 146–RJ series airplanes as the additional affected airplanes. However, in reconsideration of the entire fleet size that would be affected by a supersedure action, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to these additional airplanes. This AD does not supersede AD 93–17–04; airplanes listed in the applicability of AD 93–17–04 are required to continue to comply with the requirements of that AD. This proposed AD is a separate AD action, and is applicable to all British Aerospace Model Avro 146–RJ series airplanes.)

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $450, or $150 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft, Limited): Docket 94–NM–152–AD.

Applicability: All Model Avro 146–RJ series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the main fitting, which could lead to collapse of the nose land gear (NLG) during landing, accomplish the following:

(a) For airplanes on which NLG part number 200876001 or 200876003 has been installed:

(1) Prior to the accumulation of 4,000 total landings or within 30 days after the effective date of this AD, whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, Revision 2, dated July 10, 1993. Repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 4,000 landings.

(b) For airplanes on which NLG part number 200876002, 200876004, or 201138002 has been installed:

(1) Prior to the accumulation of 16,000 total landings or within 30 days after the effective date of this AD, whichever occurs later, conduct an eddy current or ultra sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, Revision 2, dated July 10, 1993. Repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 8,000 landings.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 1, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27479 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–NM–163–AD]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A Series Airplanes Equipped With Certain Air Cruisers Evacuation Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A series airplanes. This proposal would require repetitive inspections to verify proper deployment of the evacuation slide at each door position, and various follow-on actions to correct discrepancies. This proposal is prompted by a report that, during operational checks of evacuation slides on in-service airplanes, the inflation valves failed to deploy the evacuation slide properly. The actions specified by the proposed AD are intended to prevent failure of the evacuation slide to deploy automatically on demand, which would necessitate the flight crew to manually deploy the slide; this situation could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by January 4, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington, DC 20041–6039; and Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–163–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A series airplanes equipped with certain Air Cruiser evacuation slides. The CAA advises that, during operational checks of evacuation slides on these airplanes, the inflation valves failed to deploy the evacuation slide properly. Subsequent investigation, conducted by Air Cruisers (the manufacturer of the evacuation slides), revealed that the existing design of the inflation valves requires excessive operating pull force to activate deployment of the evacuation slide. This condition, if not corrected, could result in failure of the evacuation slide to deploy automatically, which necessitates the flight crew to manually deploy the slide. This situation could delay or impede the evacuation of passengers during an emergency.

British Aerospace has issued Service Bulletin S.B. 25–328, Revision 2, dated July 10, 1993, which describes procedures for repetitive inspections to verify proper deployment of the evacuation slide at each door position, and various follow-on actions to correct discrepancies. The CAA classified this service bulletin as mandatory.

Addditionally, Air Cruisers Company has issued Service Bulletin S.B. 201–25–17, dated June 4, 1992, which describes procedures for modification of the inflation valve of the evacuation slide. This modification entails replacing the existing valve with a new, improved valve. The new valve has a lower maximum operating pull force, which will permit the evacuation slide to deploy automatically on demand.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same

type design registered in the United States, the proposed AD would require repetitive inspections to verify proper deployment of the evacuation slide at each door position, and various follow-on actions to correct discrepancies. The proposed AD would also require modification of the inflation valve of the evacuation slide, which would terminate the repetitive inspection requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 41 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,610, or $210 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 94–NM–163–AD.

Applicability: Model British Aerospace BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A series airplanes; equipped with Air Cruisers Company evacuation slides, as listed in British Aerospace Service Bulletin S.B. 25–328, Revision 2, dated July 10, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the evacuation slide to deploy automatically, which necessitates the flight crew to manually deploy the slide and subsequently could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 3 months after the effective date of this AD, perform an inspection to verify proper deployment of the evacuation slide at each door position, in accordance with British Aerospace Service Bulletin S.B. 25–328, Revision 2, dated July 10, 1993.

(1) If the slide deploys properly, repeat the inspection thereafter at intervals not to exceed 6 months.

(2) If any slide fails to deploy properly, prior to further flight, conduct the actions specified in paragraphs 2.A.3 through 2.A.6 of the Accomplishment Instructions of the service bulletin.

(b) Within 8 months after the effective date of this AD, modify the inflation valves of the evacuation slide, in accordance with Air Cruisers Company Service Bulletin S.B. 201–25–17, dated June 4, 1992. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 1, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27476 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–NM–132–AD]

Airworthiness Directives; British Aerospace Model Avro 146–RJ70A and –RJ85A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model Avro 146–RJ70A and –RJ85A series airplanes. This proposal would require an inspection to identify and remove certain cable terminals on the auxiliary power unit (APU) starter circuit and installation of certain new cable terminals. This proposal is prompted by a report that, during an inspection of the cable terminals on the APU starter circuit, incorrect cable terminals were found installed on these airplanes. The actions specified by the proposed AD are intended to ensure the installation of correct starter cable terminals in the APU; incorrect cables could lead to the inability of the pilot to start the APU when needed in a situation of loss of other electrical power sources.

DATES: Comments must be received by January 4, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–132–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–132–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model Avro 146–RJ70A and –RJ85A series airplanes. The CAA advises that, during an inspection of the cable terminals in the auxiliary power unit (APU) starter circuit, incorrect cable terminals were found installed on these airplanes. Investigation revealed that nickel-plated copper terminals were installed during production instead of aluminum/copper terminals. Nickel-plated copper terminals that contact APU starter cables having an aluminum core result in dissimilar metal corrosion. Such corrosion could lead to the loss of power to the APU, and the consequent inability of the pilot to start the APU when necessary in a situation where an airplane's primary or other electrical power sources are lost. If this were to occur, all electrical power on the airplane may be lost.

Avro has issued Service Bulletin S.B. 49–40, Revision 1, dated March 17, 1994, which describes procedures for a detailed visual inspection to identify the cable terminals fitted to cables KA47 and KA48 in the APU starter circuit at terminal block KA9. This service bulletin also describes procedures for removing the cable terminals identified as part number (P/N) S1007–042 and installing new cable terminals having P/N S1006–040. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a detailed visual inspection to identify the cable terminals fitted to cables KA47 and KA48 on the APU starter circuit at terminal block KA9, removal of certain cable terminals, and installation of certain new cable terminals. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $250 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $997.50, or $332.50 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 94–NM–132–AD.

Applicability: Model Avro 146–RJ70A and –RJ85A series airplanes; as listed in Avro International Aerospace Service Bulletin 49–40, Revision 1, dated March 17, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of electrical power to the auxiliary power unit (APU), accomplish the following:

(a) Within 5 months after the effective date of this AD, perform a detailed visual inspection to identify the cable terminals fitted to cables KA47 and KA48 in the APU starter circuit at terminal block KA9, in accordance with Avro International Aerospace Service Bulletin S.B. 49–40, Revision 1, dated March 17, 1994. If the cable terminals are identified as part number (P/N) S1007–042, prior to further flight, remove the cable terminals and install new cable terminals having P/N S1006–040, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 1, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27475 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 239, 240, and 274

[Release Nos. 33–7106; 34–34923; IC–20670; File No. S7–31–94]

RIN 3235–AE14

Disclosure Concerning Legal Proceedings Involving Management, Promoters, Control Persons and Others

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment amendments that would expand the types of legal proceedings required to be disclosed in Commission filings, add such disclosure to certain investment company filings, and increase to 10 years the reporting period for such legal proceedings disclosure.

DATES: Comments must be submitted on or before January 6, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Comment letters should refer to File No. S7–31–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–6009.

FOR FURTHER INFORMATION CONTACT: James R. Budge, Office of Disclosure Policy, (202) 942–2910, Division of Corporation Finance (Mail Stop 3–12); with regard to investment company issues, Kathleen K. Clarke, Office of Disclosure and Investment Adviser Regulation, (202) 942–0721, Division of Investment Management (Mail Stop 10–6), Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009.

SUPPLEMENTARY INFORMATION: The Commission today is publishing for comment proposed amendments to paragraphs (f) and (g) of Item 401 [1] of Regulation S-K [2] and paragraph (d) of Item 401 [3] of Regulation S-B [4] under the Securities Act of 1933 ("Securities Act") [5] and the Securities Exchange Act of 1934 ("Exchange Act").[6] The Commission also proposes to conform legal proceedings disclosure items in Form 1–A [7] under the Securities Act, and Schedules 13D,[8] 13E–3,[9] 14A [10] and 14D–1 [11] under the Exchange Act. The Commission also is proposing to add legal proceedings disclosure requirements to various forms used by registered investment companies under the Securities Act or the Investment Company Act of 1940 ("Investment Company Act"),[12] including Forms N–1A,[13] N–2,[14] N–3,[15] N–4,[16] N–5,[17] N–8B–2,[18] N–8B–3[19] and N–8B–4.[20]

I. Executive Summary

The Commission's current regulations require disclosure of legal proceedings [21] involving executive officers, directors, persons nominated to become directors, promoters, significant shareholders, participants in proxy contests, and other specified persons ("designated persons").[22] The principal provisions

[1] 17 CFR 229.401(f) and (g).

[2] 17 CFR Part 229.

[3] 17 CFR 228.401(d).

[4] 17 CFR Part 228.

[5] 15 U.S.C. 77a *et seq.*

[6] 15 U.S.C. 78a *et seq.*

[7] 17 CFR 239.90.

[8] 17 CFR 240.13d–101.

[9] 17 CFR 240.13e–100.

[10] 17 CFR 240.14a–101.

[11] 17 CFR 240.14d–100.

[12] 15 U.S.C. 80a–1 *et seq.* As discussed in Section IV, below, investment companies currently are specifically required to disclose legal proceedings only in proxy statements related to the election of directors and not in registration statements or other disclosure documents.

[13] 17 CFR 274.11A.

[14] 17 CFR 274.11a–1.

[15] 17 CFR 274.11b.

[16] 17 CFR 274.11c.

[17] 17 CFR 274.5.

[18] 17 CFR 274.12.

[19] 17 CFR 274.13.

[20] 17 CFR 274.14.

[21] The term "legal proceeding," as used in this release and in current Item 401, includes criminal convictions, as well as findings, orders or sanctions in civil and administrative actions, that have not been reversed, suspended or vacated. It also includes criminal actions pending at the time a disclosure document is filed, and the initiation of bankruptcy or similar proceedings. With respect to proposed Item 401, the term also encompasses sanctions issued by securities and commodities self-regulatory organizations that have not been reversed or otherwise rendered of no effect.

[22] As used in this release, "designated person" includes the persons identified in the following disclosure provisions, forms and schedules: *S-K Item 401 (f) and (g) and S-B Item 401(d)*—executive officers, directors, persons nominated to become directors, as well as promoters and control persons of newly public companies; *Schedules 13D, 13E–3, and 14D–1*—the person filing the schedule. In addition, if the filer is a general or limited partnership, syndicate or other group—the individual general partners of general or limited partnerships, each member of such syndicate or group and each person controlling such partner or member; if such general partner, member or person controlling such partner or member is a corporation, or if the filer is a corporation—the corporation's directors and executive officers, persons controlling such corporation, and directors and executive officers of any corporation ultimately in control of such corporation; *Proxy statements relating to election contests*—any participant in an

Continued

are found in Items 401 (f) and (g) of Regulation S-K and Item 401(d) of Regulation S-B,[23] but a number of forms and schedules require similar disclosure, as discussed below.[24] A review of current requirements has raised questions about the adequacy of the five-year period for reporting such proceedings. In light of these questions, as well as the enactment of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Remedies Act"),[25] the Commission proposes to expand the disclosure provisions and the time frame of the current requirements and to eliminate the differences in requirements among various forms.

The amendments proposed today would consolidate and clarify existing legal proceedings disclosure provisions, as well as add requirements to disclose the following:

- Federal and state agency receivership appointments involving a designated person, any partnership in which such person was a general partner, and any corporation in which such person served as an executive officer;[26]
- All judicial and administrative findings, orders and sanctions based on alleged violations of federal or state securities, commodities, banking and insurance laws and regulations;[27]
- Civil and administrative proceedings resulting from a designated person's involvement in mail fraud, wire fraud, and fraud in connection with activities related to a business entity;[28]
- Civil and administrative actions relating to a designated person's breach of a fiduciary duty owed to a corporation, partnership, business trust or similar entity;[29]
- Administrative orders restricting a designated person's business practices;[30]
- Disciplinary sanctions imposed against a designated person by securities and commodities self-regulatory organizations ("SROs"); and
- Comparable foreign legal proceedings.[31]

Disclosure would be required for 10 years following the specified event, expanding the current five-year provision.

The proposals would rescind the general provisions that currently permit disclosure to be omitted if the registrant believed that the information would be neither material to investors in evaluating the ability and integrity of management, nor to a voting or investment decision; provisions relating to bankruptcy or insolvency proceedings, however, would retain the materiality language. In addition, the provision limiting disclosure to administrative orders that restrict activities for periods of more than 60 days would be deleted.[32]

The proposals also conform the requirements in various forms and schedules under the Securities Act and the Exchange Act. Finally, the Commission is proposing to add legal proceedings disclosure to investment company registration statement forms.

II. Background of Legal Proceedings Requirements

Disclosure of information regarding legal proceedings involving directors, executive officers, control persons, promoters and others has been required in various filings under the federal securities laws for many years. In 1956, the Commission adopted the current provisions requiring participants in proxy contests involving the election or removal of directors to disclose criminal convictions (other than traffic violations or similar misdemeanors) that occurred within the past 10 years.[33] Since their adoption in 1968, large shareholder beneficial ownership reports[34] also have required disclosure of criminal convictions with respect to the person or persons filing the report.[35]

More than 20 years ago, the Commission began requiring disclosure of legal proceedings involving directors in registration statements and annual reports filed under the Exchange Act.[36] In 1970, Exchange Act registration statements[37] and annual reports[38] were amended to require disclosure of the initiation of bankruptcy or other insolvency proceedings, court appointments of receivers, criminal convictions and pending criminal

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election contest, as defined by Instruction 3 to Item 4 of Schedule 14A (in addition to the Item 401 disclosure generally required in a proxy statement involving an election of directors, contested or otherwise); *Regulation A Offering Circular (Model B)*—executive officers, directors and persons nominated to become directors; *Prospectuses Relating to Oil and Gas Programs (Securities Act Industry Guide 4)*—management and operating companies (in addition to the disclosure required by the appropriate registration form); *Registration Statements Relating to Interests in Real Estate Limited Partnerships (Securities Act Industry Guide 5)*—the persons making investment decisions (in addition to the disclosure required by the appropriate registration form).

[23] In order to simplify references to the legal proceedings disclosure requirements, references to Item 401(f) or 401(g) hereafter should be read to include the comparable provisions in Regulation S-B Item 401(d).

[24] In addition to provisions requiring disclosure of legal proceedings involving designated persons, Regulation S-K Item 103 [17 CFR 229.103] requires disclosure of material pending legal proceedings involving the registrant.

[25] Pub. L. 101–429, 104 Stat. 931 (1990). The Remedies Act amended the federal securities laws to provide for: civil money penalties in civil actions for violations of the federal securities laws; Commission authority to issue cease-and-desist orders; court enforcement of cease-and-desist orders and imposition of civil money penalties for failure to comply; affirmation of power of federal courts to order officer and director bars and suspensions; and civil money penalties, disgorgement, and orders of accounting in Commission administrative proceedings. Congress granted these new judicial and administrative remedies to increase both the Commission's ability to deter those who violate the securities laws and its flexibility to adapt remedies to the varying circumstances of particular conduct and violators.

[26] Current requirements limit disclosure to court-appointed receiverships.

[27] Existing provisions require disclosure of court orders restricting certain business activities subject to federal or state securities, commodities, banking and insurance laws, administrative restrictions on such activities that exceed 60 days, and court limitations on any business practice. Disclosure also is required of judicial and administrative findings of violations of federal or state securities or commodities laws.

[28] Disclosure of fraud-related legal proceedings currently is limited to criminal fraud actions and to the types of proceedings listed in n.27, above, that involve fraud.

[29] Disclosure currently is required if the breach of fiduciary duty resulted in one of the restrictions identified in n.27, above.

[30] Administrative restrictions on business practices currently must fall within one of the categories identified in n.27, above, before disclosure is required.

[31] Current provisions do not distinguish between criminal and civil proceedings brought within the United States and those pursued in foreign jurisdictions. The proposals would make it clear that disclosure is required of any foreign criminal or civil proceeding if its domestic counterpart would be required to be disclosed and would add provisions requiring disclosure of foreign administrative and bankruptcy actions.

[32] The provisions of paragraphs (f) and (g) of Regulation S-K Item 401 would be consolidated into a single paragraph (f).

[33] Release No. 34–5276 (January 17, 1956) [21 FR 577]. This originally was adopted as a provision of Schedule 14B, and a summary of this information was required to be furnished in election contest proxy statements. In October 1992, the Commission eliminated the Schedule 14B filing requirement and moved the legal proceedings disclosure provision from that Schedule into Item 5(b)(1)(iii) of Schedule 14A. *See* Release No. 34–31326 (October 16, 1992) [57 FR 48276]. That provision currently requires disclosure of any criminal conviction of a "participant" in the election contest that has occurred in the last 10 years.

[34] Schedule 13D. Release No. 34–8370 (July 30, 1968) [33 FR 11015].

[35] The ten year disclosure requirement originally found in the Schedule 13D was revised to a five-year requirement in 1977. Release No. 33–5808 (February 24, 1977) [42 FR 12342].

[36] In March 1969, the Commission's Disclosure Policy Study recommended increased disclosure of legal proceedings involving management in Securities Act registration statements and Exchange Act registration statements, proxy statements and annual reports. *Disclosure to Investors: A Reappraisal of Administrative Policies under the '33 Act and '34 Act*, Report and recommendations to the Securities and Exchange Commission from the Disclosure Policy Study, March 1969, pp. 93–95.

[37] Form 10, 17 CFR 249.210, Release No. 34–8996 (October 14, 1970) [35 FR 16537].

[38] Form 10–K, 17 CFR 249.310, Release No. 34–9000 (October 21, 1970) [35 FR 16919].

actions if these actions involved a director of the registrant and were material to an evaluation of the director's ability and integrity. Disclosure also was required if a court restricted activities involving the purchase or sale of securities or certain activities in the securities, commodities, banking and insurance industries.[39] In the administrative context, disclosure of similar restrictions was required if a suspension or bar exceeded 60 days. Disclosure was required if the action was taken within the past 10 years.

In 1973, the legal proceedings disclosure provisions were expanded to include executive officers.[40] Comparable requirements were added at that time to the general form for registration under the Securities Act[41] and the registration form used for certain development stage companies.[42]

In July 1978, the legal proceedings disclosure requirements for Securities Act registration statements, as well as those in the Exchange Act registration statement and annual report, were consolidated into Regulation S–K, and the individual provisions were replaced with references to the Regulation S–K Item.[43] The disclosure requirements also were extended to real estate company registration statements and proxy and information statements.[44] The disclosure requirements were expanded at that time to include information relating to persons nominated to become directors and to require disclosure of court orders imposing restrictions on any business practice, as well as injunctions prohibiting future violations of federal or state securities laws.[45] Disclosure of findings of securities law violations by a court or by the Commission also was added. Finally, the time period for the disclosure was reduced from 10 to five years from the time the action was taken.[46]

Substantive revisions to the legal proceedings disclosure requirements were made most recently in 1984.[47] The amendments required disclosure of legal proceedings involving federal commodities laws[48] and applied the disclosure requirements to promoters and control persons of newly public companies.[49]

In 1992, the Commission adopted Regulation S–B as part of its small business initiatives, which included an Item 401(d), governing legal proceedings disclosure, patterned on the requirements of Item 401 (f) and (g) of Regulation S–K.[50] This disclosure is required in connection with Securities Act registration statements on Form SB–2,[51] Exchange Act registration statements on Form 10–SB,[52] and Exchange Act annual reports filed by small businesses.[53]

Other disclosure documents include legal proceedings disclosure requirements separate from those found in Regulation S–K or Regulation S–B. Schedule 14D–1,[54] the tender offer

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[39] Specifically, disclosure was required if the director had been restricted from acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company. Disclosure also was required if the court imposed any other restriction on activities associated with the position.

[40] Release No. 33–5395 (June 1, 1973) [38 FR 17202].

[41] Form S–1 [17 CFR 239.11]. At the same time, prospectuses relating to interests in oil and gas programs also were required to include disclosure of legal proceedings involving management and operating companies, because the Industry Guide applicable to such programs contained a provision requiring disclosure of the background information called for by Form S–1 with respect to those persons. *See* Release No. 33–5036 (January 19, 1970) [35 FR 1233], adopting Guide 55, subsequently redesignated Guide 4 [17 CFR 229.801(d)]. In 1976, through the operation of a newly adopted Securities Act Industry Guide for registration statements relating to interests in real estate limited partnerships, comparable disclosure was required in such registration statements respecting individuals responsible for a partnership's investment decisions. *See* Release No. 33–5692 (March 17, 1976) [41 FR 17403], adopting Guide 60, subsequently redesignated Guide 5 [17 CFR 229.801(e)].

[42] In 1973, the then Form S–2 was used for development stage companies (other than insurance, investment or mining companies) that had not had any substantial gross returns from the sale of products or services, or any substantial net income from any source, for any fiscal year ended during the past five years, had not succeeded to any business that had such returns or net income, and did not have any subsidiaries (other than inactive subsidiaries with no more than nominal assets).

[43] Regulation S–K Item 401 [17 CFR 229.401]; Release No. 33–5949 (July 28, 1978) [43 FR 34402]. The disclosure requirements originally were included in Regulation S–K Item 3 (Directors and executive officers), subsequently redesignated Item 401. Release No. 33–6383 (March 3, 1982) [47 FR 11380].

[44] Provisions requiring the disclosure called for by Regulation S–K Item 401 were added to Form S–11 (for registration of securities of real estate companies) [17 CFR 239.18] and the proxy statement requirements in Schedule 14A. This new provision did not replace the requirement to disclose criminal proceedings involving participants in an election contest, discussed above in n.33, but rather, was included as an additional requirement.

The amended proxy statement requirements also applied to information statements prepared in accordance with Schedule 14C [17 CFR 240.14c–101] of the Exchange Act, which incorporates many of the proxy statement requirements, and to proxy statements under Rule 20a–1 of the Investment Company Act [17 CFR 270.20a–1], which makes the Schedule 14A disclosure requirements applicable to investment companies.

[45] Section 3(a)(47) of the Exchange Act [15 U.S.C. 78c(a)(47)] defines "federal securities laws" to mean the Securities Act, the Exchange Act, the Public Utility Holding Company Act of 1935 [15 U.S.C. 79a *et seq.*], the Trust Indenture Act of 1939 [15 U.S.C. 77aaa *et seq.*], the Investment Company Act, the Investment Advisers Act of 1940 ("Investment Advisers Act") [15 U.S.C. 80b–1 *et seq.*], and the Securities Investor Protection Act of 1970 [15 U.S.C. 78aaa *et seq.*].

[46] Subsequent to these changes, the Commission incorporated the Item 401(f) requirements into other disclosure documents. In April 1980, the Commission amended Form S–8 (17 CFR 239.16b), for securities issued pursuant to employee benefit plans, to require the incorporation by reference of the issuer's latest Exchange Act annual report, including its legal proceedings disclosure, into the registration statement. Release No. 33–6202 (April 2, 1980) [45 FR 23653].

In March 1982, Securities Act Industry Guides 4 and 5 were amended to require the information specified in Regulation S–K Item 401, replacing the reference to the requirements of Form S–1. Release No. 33–6384 (March 3, 1982) [47 FR 11476]. *See* n.41, above, and current Item 11 of Guide 4 and Item 9.A. of Guide 5.

At that time, the Commission also adopted current Form S–2 [17 CFR 239.12], for registration under the Securities Act of securities of certain issuers, and Form S–3 [17 CFR 239.13], for registration under the Securities Act of securities of certain issuers offered pursuant to certain types of transactions. Release No. 33–6383 (March 3, 1982) [47 FR 11380]. These forms incorporate by reference information required in the Form 10–K, including the legal proceedings disclosure.

In the same year, the Commission adopted Form S–18 [17 CFR 239.28] (optional registration form for small issuers) Release No. 33–6408 (June 4, 1982) [47 FR 25126] and Form S–20 [17 CFR 239.20] (optional registration form for standardized options), Release No. 33–6426 (September 16, 1982) [47 FR 41950]. Both forms required disclosure of the legal proceedings specified in Regulation S–K Item 401. Form S–18 was rescinded in connection with the small business initiatives in 1992. Release No. 33–6949 (July 30, 1992) [57 FR 36442]. For information relating to the adoption of Form S–4 [17 CFR 239.25], *see* n.49, below.

[47] Release No. 33–6545 (August 9, 1984) [49 FR 32762].

[48] Specifically, Regulation S–K Item 401(f) was amended to require disclosure of judicial and administrative restrictions on activities regulated by the Commodity Futures Trading Commission ("CFTC"), as well as court restrictions on engaging in activities involving the purchase or sale of a commodity or the violation of federal commodities laws. A provision requiring disclosure of findings of federal commodities law violations by courts or the CFTC also was added.

[49] The amendments added Item 401(g) [17 CFR 229.401(g)], which provided that registrants that have not been subject to the reporting requirements of Exchange Act Sections 13(a) [15 U.S.C. 78m(a)] or 15(d) [15 U.S.C. 78o(d)] for the 12 months immediately prior to the filing of the registration statement, report or other document to which Item 401 is applicable, are required to disclose the Item 401(f) information with regard to control persons if the event occurred within the past five years and was material to a voting or investment decision. In cases where such registrants were organized within the past five years, the Item 401(f) disclosure is to be included with respect to promoters as well.

In April 1985, the Commission adopted Form S–4 (for registration of securities issued in business combination transactions), which requires disclosure of the Item 401 information. Release No. 33–6578 (April 23, 1985) [50 FR 18990].

[50] Release No. 33–6949 (July 30, 1992) [57 FR 36442].

[51] 17 CFR 239.10.

[52] 17 CFR 249.210b.

[53] Form 10–KSB [17 CFR 249.310b].

[54] 17 CFR 240.14d–100.

schedule adopted in 1977,[55] requires disclosure if during the last five years the person filing the schedule was convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors), or was the subject of a judicial or administrative order that enjoined future violations of, or prohibited activities subject to, federal or state securities laws, or that included findings of violations of those laws. In 1978, Schedule 13D was amended to include legal proceedings disclosure provisions comparable to those included in Schedule 14D–1,[56] and when Schedule 13E–3, for going private transactions,[57] was adopted in 1979, the same disclosure was required.[58] Unlike the Regulation S–K Item 401(f) requirements, disclosure is required of the enumerated proceedings without regard to the filer's determination as to their materiality, and disclosure of administrative proceedings is not limited to suspensions or bars exceeding 60 days.

The offering circular furnished to investors at or prior to the offer or sale of securities made in reliance upon an exemption under Regulation A was amended in 1981 to require legal proceedings disclosure.[59] Issuers are required to disclose in the circular criminal convictions, the initiation of bankruptcy or other insolvency proceedings, and appointments of receivers if those actions involved any director, person nominated to become a director or executive officer, if the information is material to an evaluation of the person's ability or integrity, and if the action was taken within the past five years.[60]

[55] Release No. 33–5844 (July 21, 1977) [42 FR 38341].

[56] Release No. 33–5925 (April 21, 1978) [43 FR 18484].

[57] 17 CFR 240.13e–100.

[58] Release No. 33–6100 (August 2, 1979) [44 FR 46736].

[59] Release No. 33–6340 (August 7, 1981) [46 FR 41766]. This requirement currently is found in Offering Circular Model B, Part II of Form 1–A, the Regulation A Offering Statement [17 CFR 239.90].

On April 28, 1993, the Commission adopted Form SB–1 [17 CFR 239.9], an optional registration form for use by certain small businesses. *See* Release No. 33–6996 (April 28, 1993) [58 FR 26509]. Form SB–1 affords filers the option of providing the disclosure required by the Model B offering circular found in Form 1–A, including its legal proceedings disclosure requirements.

[60] Issuers not subject to Exchange Act reporting obligations that sell securities pursuant to an exemption in accordance with Section 230.505 or Section 230.506 of Regulation D (governing the limited offer and sale of securities without registration under the Securities Act [17 CFR 230.501–230.508]) to a purchaser that is not an accredited investor must provide the disclosure, including legal proceedings information, required by Regulation A (if the issuer is eligible to rely on that exemption) or by the prospectus requirements of the registration statement the issuer is eligible to use.

III. Proposed Amendments

The amendments proposed today would retain and clarify current legal proceedings disclosure requirements, expand the scope of existing provisions, and lengthen the time period for which disclosure is required. With one exception,[61] the proposals also would delete the provisions permitting a registrant to omit disclosure where it concludes that the information would not be material to investors in evaluating the ability and integrity of management,[62] or would not be material to a voting or investment decision.[63] Consequently, under the proposals, like other line item disclosure requirements, information concerning legal proceedings would be required if specified by the item.[64]

The proposed amendments would require disclosure of any identified legal proceeding unless it was subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect,[65] and would codify the current staff interpretation that disclosure is not required if a conviction is reversed. The proposals also would make it clear that disclosure is required while a legal proceeding is pending appeal.[66]

Currently, it is the practice to disclose legal proceedings background information for each general partner of a partnership and each trustee of a real estate investment trust. A new instruction would be added to codify this practice and to expand the requirement to provide such disclosure with respect to trustees of any registrant that is a trust, as well as any other persons providing comparable services to such entities. Disclosure also would be required relating to any person who performs, either directly or indirectly, director or executive officer functions pursuant to a management contract, service contract, such as those used by asset-backed pools, or otherwise.[67]

While specific requests for comment are made throughout with respect to the proposals discussed in detail below, commenters are requested to comment generally on the need for revision of the legal proceedings disclosure requirements. Is the approach proposed adequate to address investor concerns about the background of those who direct the affairs of public companies, or would some other method be more effective?

A. Disclosure of Judicial and Administrative Proceedings

1. Bankruptcy and Insolvency Proceedings

The current provision requiring disclosure of the court appointment of a receiver, fiscal agent or similar officer with respect to a business in which a designated person served as an executive officer would be expanded to include a similar appointment made by a federal or state agency.[68] For example, disclosure would be required where a state insurance commissioner appointed a conservator to take control of the business and assets of an insurance company for which a designated person had served as an executive officer within two years prior to such appointment.[69] Disclosure also would be required of the appointment by a bank regulatory authority of a receiver or conservator to operate, sell or liquidate a financial institution.[70]

[61] *See* discussion of bankruptcy and insolvency disclosure in Section III.A.1, below.

[62] Current Item 401; current Item 8(d) of Part II, Offering Circular (Model B), Form 1–A.

[63] Current Item 401(g) (1) and (2). The provisions of Item 401(g) requiring disclosure of legal proceedings involving promoters and control persons of newly public companies would be incorporated into proposed Item 401(f). *See* proposed Item 401(f)(2).

[64] Current Instruction 2 to Item 401(f), which states that registrants may voluntarily advise the staff that the disclosure was not required based on a determination that it is not material to an investment or voting decision, would be inapplicable to most disclosure requirements. The substance of the instruction would be moved to a note to the bankruptcy provisions found in proposed Item 401(f)(1)(i).

[65] *See* proposed Item 401(f)(1), representing a consolidation of similar provisions found in paragraphs (3), (4), (5) and (6) of current Item 401(f).

Under current and proposed rules, an order or sanction need not be disclosed if it has been reversed or otherwise set aside on the basis of the underlying law or facts. However, a registrant must disclose a permanent injunction involving a designated person during the entire disclosure period even if equitable relief from the injunction has been granted before the close of such period.

[66] Instruction 1 to Item 401(f) would be amended to indicate that disclosure of final convictions, orders, judgments, decrees or sanctions is required from the date of entry. If appealed, disclosure would continue to be required. If ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, disclosure no longer would be required. Disclosure of preliminary orders, judgments, decrees and sanctions would be required from the date that any right to appeal the preliminary action expired.

[67] *See* proposed Instruction 5 to Item 401(f).

[68] Proposed Item 401(f)(1)(i).

[69] *See, e.g.*, Ariz. Rev. Stat. Ann. § 20–169 (authorizing the director of insurance to take possession of, or to appoint a conservator for, an insolvent insurance company); Texas Insurance Code Ann. § 21.28A (authorizing the commissioner of insurance to undertake supervision of or to appoint a conservator for, an insolvent insurance company).

[70] *See, e.g.*, Section 203 of the Bank Conservation Act [12 U.S.C. 203] (authorizing the Comptroller of the Currency of the United States to appoint a conservator for a national bank), and Cal. Financial Code § 8250 (authorizing the California Savings and Loan Commissioner to appoint a receiver for a savings and loan association).

While in most instances the provisions allowing registrants to omit disclosure of legal actions based on their materiality would be eliminated under the proposals, as discussed elsewhere in this release,[71] the Commission proposes to retain a provision permitting filers to weigh the materiality of bankruptcy and insolvency proceedings involving designated persons prior to disclosure.[72] Unlike the other legal proceedings to be disclosed under Item 401, bankruptcy proceedings include proceedings as to which the designated person's responsibility could vary considerably. Comment is solicited as to whether this materiality provision should be retained with respect to bankruptcy and insolvency proceedings, as proposed, or whether such actions should be disclosed without exception.

The Commission also solicits commenters' views on whether the current provisions should be expanded to require disclosure where the designated person served as a director of a company within two years before the initiation of bankruptcy or insolvency proceedings or the appointment of a receiver or conservator with respect to that company. Currently, disclosure is required only if the person was an executive officer of the entity. Commenters should identify the reasons for or against such an expansion.

Further, comment is sought as to whether the current provision requiring disclosure where the designated person served as an executive officer within two years of the identified bankruptcy or insolvency actions should be retained, as proposed, or whether the two-year time period should be shortened or lengthened, for example, to one year, or three or five years. Commenters also should address whether disclosure should be required where a designated person was an executive officer of a financial institution whose operation or sale is supervised by an administrative authority in the absence of the formal appointment of a receiver or conservator.[73]

2. Criminal Proceedings

Like the current Item, the proposals would require disclosure where a designated person was convicted in a criminal proceeding or was the named subject of a pending criminal action (excluding traffic violations and other minor offenses).[74] However, the proposal clarifies that the Item requires disclosure of a criminal conviction resulting from a designated person's entry of a plea of nolo contendere.

3. Civil and Administrative Proceedings

a. *Money penalty consent decrees and other orders or sanctions.* Disclosure concerning civil and administrative proceedings involving designated persons now is limited to judicial orders restricting specified business activities,[75] administrative orders restricting such activities for more than 60 days,[76] and judicial or administrative findings of securities or commodities law violations.[77] As proposed, any judicial or administrative finding, order or sanction relating to violations of federal and state securities and commodities laws and regulations, or laws and regulations respecting financial institutions or insurance companies, would trigger disclosure.[78] The exemption from disclosure of administrative proceedings that impose restrictions for periods of less than 60 days would be eliminated. Comment is solicited as to whether this exemption should be retained, but with a shorter time period, such as 20, 10 or five days.

As a result of the proposed amendments, disclosure would be required of any order or sanction resulting from proceedings brought under the federal securities laws, including court-imposed civil money penalties and judicial orders temporarily barring an individual from serving as an officer or director of a public company, as authorized by the Remedies Act.[79] Disclosure of such orders or sanctions would be required, whether or not the court makes a finding that securities laws were violated.[80]

Similarly, disclosure explicitly would be required of any judicial or administrative finding, order or sanction issued or imposed against the designated person under the enforcement provisions of the federal laws and regulations governing financial institutions, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"),[81] as well as under similar state statutes and regulations.[82] For example, the proposed disclosure requirements would reach a civil money penalty imposed pursuant to a settlement agreement between a designated person and a bank regulator, where the final order neither included findings of violations of the law nor imposed any limitation on that person's acting in any capacity related to banks or savings and loan associations.

b. *Fraud in connection with a financial institution, insurance company, or other business entity.* The proposals would expand current provisions by requiring disclosure of legal proceedings involving alleged violations by a designated person of any law or regulation prohibiting fraud in connection with a financial institution, insurance company or other business entity. Disclosure of legal proceedings involving fraud currently is limited to criminal fraud proceedings, civil and administrative actions involving fraud in connection with violations of securities or commodities laws, and orders restricting the designated person from acting as a director, employee or affiliated person of a bank, savings and loan association or insurance company or from engaging in related activities based on that person's fraudulent conduct. Consequently, in addition to the actions for which disclosure is

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As used in this release, "financial institution" means any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any federal or state credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution. *See* proposed Instruction 3 of Item 401(f).

[71] *See* Section III.A, above, and Section III.E, below.

[72] Proposed Item 401(f)(1)(i).

[73] *See, e.g.*, Tex. Rev. Civ. Stat. Ann. art. 342–801a (authorizing the Texas Banking Commissioner to supervise the activities of a bank) and N.Y. Banking Law § 606 (authorizing the New York Superintendent of Banks to take possession of, operate or liquidate a banking organization).

[74] Current Item 401(f)(2) and proposed Item 401(f)(1)(ii).

[75] Current Item 401(f)(3).

[76] Current Item 401(f)(4).

[77] Current Item 401(f) (5) and (6).

[78] Proposed Item 401(f)(1)(iii)(A) (1) and (2).

[79] *See, e.g.*, Section 20(d) and 20(e) of the Securities Act [15 U.S.C. 77t(d) and (e)].

[80] While courts may issue orders upon a proper showing without finding securities law violations, all administrative orders issued by the Commission contain findings of a violation or violations of securities laws and regulations, even when the order is the result of a settlement agreement. Consequently, disclosure of all orders or sanctions issued by the Commission, such as cease-and-desist orders, pursuant to the enforcement provisions added by the Remedies Act would be required under both current and proposed provisions.

[81] Pub. L. No. 101–73, 103 Stat. 183 (1989). FIRREA amended the enforcement provisions of the Federal Deposit Insurance Act ("FDIA") [12 U.S.C. 1811 *et seq.*], the Federal Reserve Act [12 U.S.C. 221 *et seq.*], the Home Owner's Loan Act of 1933 [12 U.S.C. 1461 *et seq.*], the Bank Holding Company Act of 1956 [12 U.S.C. 1841 *et seq.*], the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 *et seq.*], the Bank Protection Act of 1968 [12 U.S.C. 1881 *et seq.*], and the Federal Credit Union Act [12 U.S.C.A. 1751 *et seq.*]. The enforcement provisions relating to the Farm Credit Administration are found in the Farm Credit Act of 1971 [12 U.S.C. 2001 *et seq.*].

[82] *E.g.*, Cal. Financial Code §§ 5000–12000 (California laws governing savings and loan associations); N.Y. Banking Law §§ 10–46 (New York laws establishing the New York Banking Department, the Superintendent of Banks, and their supervisory and regulatory powers).

currently required, the proposals would require disclosure of a court order enjoining the designated person from knowingly defrauding a financial institution, whether or not the court imposed restrictions on the person's future business relationship with the institution.[83] Another example of required disclosure would be a court judgment against a designated person for violating consumer fraud statutes in connection with that person's business.[84]

c. *Civil mail and wire fraud.* The proposals also would require disclosure of civil and administrative proceedings relating to mail and wire fraud.[85] Thus, for example, court orders enjoining violations of mail or wire fraud statutes,[86] as well as U.S. Postal Service orders requiring a designated person to cease and desist from conducting a scheme or device for obtaining money or property through the mail by false representations,[87] would be disclosed.

d. *Fiduciary duties.* The proposed amendments would extend disclosure to legal actions involving laws and regulations governing fiduciary obligations owed to corporations, partnerships, business trusts and similar business entities.[88] If, for example, a designated person was subject to a court order resulting from a breach of a fiduciary duty imposed by the Employee Retirement Income Security Act of 1974 ("ERISA"),[89] or had been found to have breached a fiduciary duty as a director of a corporation, in violation of state corporation or common law, disclosure would be required.

e. *Restrictions on any business practice.* The current provision requiring disclosure where a court enjoins or otherwise limits the designated person from engaging in any business practice[90] would be expanded to require disclosure of similar orders issued by administrative authorities.[91] Under the proposals, for example, Federal Communications Commission orders requiring a designated person to cease and desist from engaging in activities that violate regulations governing telecommunications,[92] International Trade Commission orders restricting such person from engaging in unfair practices in the importation of articles into the United States,[93] Federal Trade Commission orders requiring the person to cease and desist from engaging in unfair methods of competition,[94] and other similar federal or state administrative actions would be required to be disclosed.

f. *Request for comment concerning civil and administrative proceedings.* The proposed provisions discussed above relating to civil and administrative proceedings require disclosure if a finding, order or sanction relates to an alleged violation by a designated person of securities, commodities, banking and insurance laws and regulations and other designated laws and regulations, as well as orders restricting a designated person from engaging in any business practice. Comment is requested as to whether the requirement to disclose restrictions on any business practice is sufficient to apprise investors of the backgrounds of those who direct the affairs of public companies.

Comment also is sought as to whether disclosure relating to violations of laws governing corporations, partnerships or other entities should be restricted to violations of a fiduciary duty provision, as proposed, or restricted further to violations of a fiduciary duty involving fraud. Commenters also are requested to address whether those proposals should be expanded to require disclosure of findings, orders and sanctions entered in proceedings involving alleged violations of any laws respecting such business entities. Finally, comment is requested as to whether there is any category of civil or administrative proceeding that should be excluded from the disclosure requirements and the reason for the recommended exclusion.

B. Disclosure of Disciplinary Actions by Self-Regulatory Organizations

Under the proposals, a requirement would be added to describe disciplinary sanctions imposed by any securities or commodities industry self-regulatory organization ("SRO") that oversees the business conduct and sales practices of its members.[95] The Commission requests comment as to whether there are any classes of SRO disciplinary proceedings that should be excluded, such as summary proceedings by an SRO wherein the designated person is fined not more than $2500 for minor or technical violations of the SRO's rules and procedures.[96]

C. Disclosure of Comparable Foreign Legal Proceedings

While current provisions relating to disclosure of a designated person's involvement in criminal and civil actions do not distinguish between foreign legal actions and those taken within the United States, the proposed amendments explicitly would require disclosure of foreign criminal convictions and civil proceedings before foreign courts. Moreover, provisions would be added requiring disclosure of actions by foreign administrative authorities. Thus, disclosure would be required of any foreign legal proceeding that is comparable to a domestic legal proceeding requiring disclosure.

These proposals reflect the ever-increasing international character of financial transactions and the important role played by foreign authorities in assuring safe and efficient financial

[83] *See* 18 U.S.C 1345 (allowing civil actions by the United States to enjoin the execution of a scheme or artifice to knowingly defraud a financial institution, as prohibited by 18 U.S.C. 1344 [Bank fraud]).

[84] *See*, e.g., Del. Code. Ann. tit. 6, §§ 2513 *et seq.*

[85] Proposed Item 401(f)(iii)(A)(*3*).

[86] Generally, legal actions involving mail or wire fraud would be criminal proceedings [*see* 18 U.S.C. 1341, providing criminal penalties for fraud and swindles accomplished through the mails and 18 U.S.C. 1343, providing criminal penalties for schemes and artifices to defraud by means of wire, radio or television]; however, the Attorney General of the United States may commence a civil action in any federal court to enjoin ongoing or prospective violations of federal mail or wire fraud statutes. 18 U.S.C. 1345.

[87] *See* 39 U.S.C. 3005.

[88] Proposed Item 401(f)(1)(iii)(A)(*2*). One type of a "similar business entity" under the proposed rule is a limited liability company, which strictly speaking is neither a corporation nor a partnership, but has characteristics of both. *See* Del. Code Ann. tit. 6, § 18–101 *et seq.*, for an example of a state statute (Delaware) providing for the organization of limited liability companies.

[89] See Section 409 of ERISA [29 U.S.C. 1109] (providing for equitable remedies against fiduciaries who breach fiduciary duties imposed by ERISA).

[90] Current Item 401(f)(3)(ii).

[91] Proposed Item 401(f)(1)(iii)(B).

[92] *See* 47 U.S.C. 312.

[93] *See* 19 U.S.C. 1337.

[94] *See* 15 U.S.C. 45.

[95] Proposed Item 401(f)(1)(iv). Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)] defines self-regulatory organization as any national securities exchange registered under Section 6 of the Exchange Act [15 U.S.C. 78f] (*e.g.*, the New York Stock Exchange), any securities association registered under Section 15A of the Exchange Act [15 U.S.C. 78o–3] (*e.g.*, the National Association of Securities Dealers ("NASD")), and any clearing agency registered under Section 17A of the Exchange Act [15 U.S.C. 78q–1] (*e.g.*, the National Securities Clearing Corporation). The Municipal Securities Rulemaking Board ("MSRB") also falls within the statutory definition of a self-regulatory organization, but the MSRB refers all disciplinary actions to the NASD.

Regulations under the Commodity Exchange Act [7 U.S.C. 1 *et seq.*] define self-regulatory organization as contract markets registered under Section 5 of the Commodity Exchange Act [7 U.S.C. 7] (*e.g.*, the Chicago Board of Trade) and futures associations registered under Section 17 [7 U.S.C. 21] of that Act (*e.g.*, the National Futures Association). 17 CFR 1.3(ee). Clearing organizations, as defined in 17 CFR 1.3(d) (*e.g.*, the Commodity Clearing Corporation), also are included in the definition of self-regulatory organization found in 17 CFR 1.59(a)(1).

[96] Such proceedings would include action taken pursuant to an SRO minor rule violation plan or similar plan. *See* Rule 19d–1(c)(2) [17 CFR 240.19d–1(c)(2)].

markets world-wide.[97] Comment is requested as to whether there are any other types of legal proceedings before foreign authorities that should be specifically required, as well as whether any foreign legal proceedings should be excluded from the disclosure requirements.

D. Other Legal Proceedings

1. Arbitration Proceedings

While not specifically included in the amendments proposed today, the Commission requests comment on whether disclosure should be required concerning the results of arbitration proceedings arising out of allegations of violations of securities or commodities laws and regulations, or breaches of the laws and regulations relating to other commercial transactions. Given the widespread use of arbitration clauses, as well as statutes and court rules that require or permit claims to be submitted to arbitration rather than to courts, investors may consider information regarding a designated person's involvement in arbitration proceedings material to their investment decisions.

The Commission invites comment on whether disclosure should be required concerning arbitration awards where the action would have been disclosed had the claim been pursued before a court, administrative body or SRO. In addition, commenters should address whether there are other types of alternative dispute resolution that should trigger disclosure. Comment also is requested as to whether there are any arbitration proceedings that should be exempt from disclosure in light of the nature of the issues involved or the insignificant dollar amount of the award. Finally, comment is solicited as to whether there should be dollar amount thresholds that govern disclosure and whether such thresholds should be cumulative figures based on multiple arbitration awards.

2. Rule 2(e) Proceedings

The Commission also solicits comment as to whether filers should be required to disclose all administrative actions brought by the Commission against a designated person pursuant to Rule 2(e) of the Commission's Rules of Practice.[98] Rule 2(e) provides for the suspension or disbarment of certain professionals, usually attorneys and accountants, from practicing before the Commission.[99] Where Rule 2(e) orders relate to violations of the federal securities laws,[100] disclosure would be required under both the current and proposed rules. Should the requirements be expanded to encompass Rule 2(e) orders based on lack of professional qualifications,[101] lack of character or integrity, or unethical or improper professional misconduct,[102] the conviction of a felony or of a misdemeanor involving moral turpitude, or the disbarment or revocation of a license to practice as an attorney, accountant, engineer or other expert?[103] If not, commenters should provide specific reasons for any recommended exclusions. If it is determined that all Rule 2(e) orders should be disclosed, should disclosure of disciplinary sanctions imposed by other federal and state authorities or non-government professional associations, such as bar associations, for violations of standards of professional conduct also be required?

E. Disclosure Period Expansion to 10 Years

The Commission proposes to expand the time during which disclosure is required from five to 10 years,[104] and to delete in most instances the provisions allowing registrants to omit information they determine is neither material to an evaluation of the ability or integrity of the designated person[105] nor to a voting or investment decision.[106] Based on its experience since 1978, when the original disclosure period was reduced from 10 to the current five years,[107] the Commission believes that many legal proceedings remain material beyond five years.[108] Of course, the inclusion of the information would continue to be required beyond 10 years where necessary to render statements otherwise made in the registration statement, report or document not misleading.[109]

Since some types of legal proceedings may have a greater impact on voting and investment decisions than others, the Commission requests comment as to whether there are specific actions that should be disclosed for periods less than 10 years. For example, should misdemeanors be described for a lesser period than felony convictions? Commenters favoring that approach should specify the types of proceedings to which the current five-year provision should continue to apply. On the other

[97] The International Securities Enforcement Cooperation Act of 1990 ("ISECA") [Sections 201–207 of the Securities Acts Amendments of 1990, Pub. L. No. 101–550, 104 Stat. 2713 (1990)] granted the Commission the authority to sanction regulated entities and associated persons if they have been convicted of certain crimes by a foreign court of competent jurisdiction within 10 years of filing an application with the Commission, or have been found by a foreign financial regulatory authority to have violated laws and regulations that are substantially equivalent to federal securities and commodities laws. *See* Sections 203 and 205 of ISECA, amending Section 15(b) (4) and (6) of the Exchange Act [15 U.S.C. 78o(b) (4) and (6)], Section 9(b)(4) of the Investment Company Act [15 U.S.C. 80a–9(b)(4)], and Section 203(e)(7) of the Investment Advisers Act [15 U.S.C. 80b–3(e)(7)].

[98] 17 CFR 201.2(e).

[99] "Practicing before the Commission" is defined in Rule 2(g) [17 CFR 201.2(g)] to include "transacting any business with the Commission" as well as "the preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other expert."

[100] *See* Rule 2(e)(1)(iii) [17 CFR 201.2(e)(1)(iii)], allowing the Commission to suspend or disbar a professional that has been found by the Commission in a Rule 2(e) proceeding to have violated federal securities laws, and Rule 2(e)(3) [17 CFR 201.2(e)(3)], which provides for a summary disbarment or suspension by the Commission where a court has enjoined the professional from future violations of the federal securities laws, or where the person has been found by a court or by the Commission in a separate proceeding to have violated those laws.

[101] Rule 2(e)(1)(i) [17 CFR 201.2(e)(1)(i)].

[102] Rule 2(e)(1)(ii) [17 CFR 201.2(e)(1)(ii)].

[103] Rule 2(e)(2) [17 CFR 201.2(e)(2)].

[104] Proposed Item 401(f)(1).

[105] Current Item 401 and Item 8(d) of the Regulation A offering circular (Model B).

[106] Current Item 401(g) (1) and (2). As discussed in Section III.A.1, above, the materiality provision would be retained with respect to bankruptcy and insolvency proceedings.

[107] *See* Section II, above, for background relating to this requirement.

[108] This comports with the President's Commission on Organized Crime's 1986 recommendation that disclosure of all legal proceedings required by Item 401 of Regulation S–K be extended to at least 10 years to provide adequate notice to investors and government agencies as to the background of corporate officials. *See* President's Commission on Organized Crime, *THE EDGE: Organized Crime, Business, and Labor Unions; Report to the President and the Attorney General* p. 345 (March 1986).

[109] Rule 408 [17 CFR 230.408] under the Securities Act, Rule 12b–20 [17 CFR 240.12b–20] under the Exchange Act, and Rule 8b–20 under the Investment Company Act [17 CFR 270.8b–20] require registrants to disclose, in addition to the information expressly required to be included in a registration statement or report, any further material information as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading. *Cf.* Releases No. 33–5758 (November 2, 1976) [41 FR 49493] and No. 33–5949 (July 28, 1978) [43 FR 34402] stating that information regarding events occurring outside the five-year period may be material and should be disclosed. For examples of civil actions finding legal proceedings over five years old to be material, *see SEC v. Scott*, 565 F.Supp. 1513 (S.D.N.Y. 1983) (prospectus deemed materially false and misleading, in part because 1961 Canadian fraud conviction not disclosed in 1980 prospectus); *Bertoglio v. Texas Int'l Co.*, 488 F.Supp. 630 (D. Del. 1980) (1964 Commission bar should have been disclosed in 1979 proxy materials notwithstanding five-year disclosure requirement). *See also Calderon v. Tower Associates Int'l*, Civil No. 88–1240–FR (D. Ore. March 28, 1989) (order compelling answers to interrogatories) (criminal securities law violations occurring in 1977 and 1979 deemed material and discoverable notwithstanding Item 401(f) five-year provisions).

hand, disclosure may be appropriate for periods longer than 10 years with respect to certain types of legal proceedings—for example: criminal fraud convictions; civil, administrative and SRO actions based on fraud involving securities, commodities, financial institutions, insurance companies or other businesses; actions involving mail and wire fraud; and, proceedings resulting in the removal or bar from acting in a decision-making capacity in connection with a financial institution or other business. Should these types of legal proceedings be disclosed for longer periods, such as 15 or 20 years, or indefinitely? Should disclosure be required so long as the designated person is subject to the order? Commenters should provide an analysis in support of any specific time period recommended.

Many legal proceedings based on violations of federal, state or other laws or rules or SRO rules result in orders or sanctions that remain in place for indefinite periods. For example, many injunctions, cease-and-desist orders and industry bars are imposed permanently and remain in force until further judicial or administrative action is taken to vacate the order.[110] Should the current five-year disclosure period be maintained, with the exception that any injunction, cease-and-desist order, industry bar or other continuing order or bar would be required to be disclosed for as long as the designated person is subject to the order or sanction, even when the order or sanction was imposed more than five years ago? Would that have the effect of providing sufficient disclosure of the conduct most relevant to investors' voting decisions? If such a provision were adopted, would it be appropriate to provide some outer limit (such as 10 or 15 years) after which disclosure could be discontinued?

F. Form and Schedule Amendments

As outlined above,[111] legal proceedings disclosure requirements vary among certain forms and schedules. The Commission proposes to amend the requirements found in Schedules 13D, 13E–3, 14A[112] and 14D–1 and the Regulation A offering circular (Model B) to conform with those of Regulation S–K Item 401.[113] The Commission solicits comment as to whether any schedule or form identified above should not be conformed with proposed legal proceedings requirements, and requests that commenters provide the specific rationale for any exclusion recommended.

As discussed above, the Item, forms and schedules identify persons for whom the legal proceedings disclosure is required;[114] the proposed amendments would specify that disclosure is required where the function performed by a designated person is performed by others, directly or indirectly, pursuant to a management or service contract, or otherwise.[115] Comment is requested as to whether there is any class of persons not currently subject to legal proceedings disclosure that should be. For example, should disclosure relating to promoters or control persons be required beyond the current 12 month period following an initial public offering, thus requiring disclosure in Exchange Act annual reports? Is there any class of persons currently identified as designated persons that should not be? Should the Regulation S–K Item 401 provisions be expanded to require disclosure relating to persons participating in the offering of a penny stock if the disclosure document is furnished in connection with such an offering?[116]

Finally, the Commission solicits comment as to whether legal proceedings disclosure provisions should be added to any forms, schedules or other documents where not required currently. For example, should legal proceedings involving persons issuing securities pursuant to an exemption under Regulation B,[117] relating to fractional undivided interests in oil and gas rights, be required to be disclosed in the offering sheet delivered to investors?

IV. Investment Company Act Disclosure

The Commission is proposing to add legal proceedings disclosure, as proposed to be amended, to investment company registration statement forms and to expand the scope of legal proceedings disclosure in proxy statements. Currently, legal proceedings disclosure is specifically required only in investment company proxy statements related to the election of directors.[118] Investment Company Act disclosure documents are intended, among other things, to inform investors and investment company shareholders about matters that concern the background and qualifications of those persons who oversee (such as directors) or manage (such as investment advisers) an investment company and its assets. The Commission believes that disclosure of information concerning legal proceedings may be material to investors and shareholders and is, therefore, proposing to require this disclosure in investment company disclosure documents.

The proposed amendments would require Item 401(f) disclosure in investment company prospectuses.[119] Because most investment companies are

[110] For a discussion of disclosure where a court grants relief from a permanent injunction based on conduct occurring after imposition of the order, *see* n. 65, above.

[111] Section II, above.

[112] This proposed change would only affect disclosure relating to participants in election contests, which currently requires disclosure only of criminal convictions within the past 10 years. *See* current Item 5(b)(1)(iii) of Schedule 14A. Of course, all proxy statements involving the election of directors would be affected by the rule proposals generally because Item 7(b) requires that the information specified in Item 401 be included with respect to directors, officers and director nominees.

[113] The changes to these forms and schedules are found in proposed Item 2(d) of Schedule 13D; proposed Item 2(e) of Schedule 13E–3; proposed Item 5(b)(1)(iii) of Schedule 14A; proposed Item 2(e) of Schedule 14D–1; and proposed Part II, Offering Circular Model B, Item 8(d) of Form 1–A.

[114] *See* n. 22, above.

[115] For a discussion of disclosure obligations relating to registrants that are partnerships or trusts, or whose management services are provided by outside parties pursuant to management contracts, service agreements or otherwise, *see* introduction to Section III, above.

[116] Section 504 of the Penny Stock Reform Act [Title V of the Securities Enforcement Remedies and Penny Stock Reform Act, Pub. L. No. 101–429] amended Section 15(b)(6) of the Exchange Act [15 U.S.C. 78o(b)(6)] to authorize the Commission to bar or take other administrative action against a "person participating in the offering of penny stock." As amended, Section 15(b)(6) defines a person participating in the offering of a penny stock to include "any person acting as any promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock."

[117] 17 CFR 230.300–230.346.

[118] Item 22(b)(4) of Schedule 14A. Prior to the recent amendments to the proxy rules applicable to investment companies, which consolidated the disclosure requirements in Item 22 of Schedule 14A (Release No. IC–20614 (October 13, 1994) [59 FR 52689]), Rule 20a–1 under the Investment Company Act required legal proceedings disclosure by reference to Item 7 of Schedule 14A.

[119] Proposed amendments to: Item 5 of Form N–1A (open-end investment companies); Item 9 of Form N–2 (closed-end investment companies) Item 6 of Form N–3 (separate accounts that offer variable annuity contracts that are registered under the Investment Company Act); Form N–4 (separate accounts that offer variable annuity contracts which are registered under the Investment Company Act as unit investment trusts); Items 11, 12, and 16 of Form N–5 (small business investment companies); Item 28 of Form N–8B–2 (unit investment trusts); Items 26, 27, and 28 of Form N–8B–3 (investment companies issuing periodic payment plan certificates); Items 29 and 34 of Form N–8B–4 (face amount certificate companies).

The Commission also is proposing amendments to Schedules A and B of Regulation E [17 CFR 230.610a] under the Securities Act which would require offering circulars used by small business investment companies and business development companies relying on the Regulation E exemption to include the information specified in proposed Item 401(f) as to each director, executive officer and advisory board member of the issuer and as to managerial persons of the investment adviser of the issuer.

externally managed by investment advisers, the Commission also is proposing to require disclosure concerning not only directors and officers of the investment company, but also "managerial persons" of the investment adviser.[120] For the purposes of the legal proceedings disclosure, "managerial persons" would mean "affiliated persons" of the investment adviser as that term is defined in section 2(a)(3) of the Investment Company Act [121] who are engaged in the management, direction, supervision, or performance of any activities related to the investment company.[122] This definition would include, for example, officers or employees of the investment adviser whose duties are related to the management of an investment company.[123] On the other hand, the definition is not intended to require disclosure with respect to persons affiliated with the investment adviser who have no managerial or similar responsibilities with respect to the investment company.[124] The Commission requests comment on whether the proposed definition of "managerial persons" will result in appropriate disclosure that will provide material information to investment company investors and shareholders.[125]

The Commission also is proposing to conform the legal proceedings disclosure in proxy statements to the registration statement forms, as proposed to be amended. The proposed disclosure in proxy statements for officers and directors of the investment company and managerial persons of the investment adviser would be required *both* in connection with the election of directors, as currently required, and in proxy statements seeking approval of an investment advisory contract.[126] Legal proceedings disclosure may be as relevant to a shareholder's assessment of an investment advisory contract as it is to the election of directors.

V. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and form amendments or suggest additional changes or comment on other matters that might have an impact on the amendments set out in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Comment is requested on the impact of the proposals from the point of view of the public, the entities or persons making filings affected by the proposals, and the persons with respect to whom disclosure would be made. The Commission further requests comment on any competitive burdens that might result from adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act,[127] Section 23(a) of the Exchange Act,[128] and Section 38(a) of the Investment Company Act.[129] Comment letters should refer to File No. S7–31–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–6009.

VI. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed changes to disclosure requirements contained in this release, commenters are requested to provide views and data relating to any costs and benefits associated with these proposals. It is expected that the enhanced legal proceeding disclosure provisions will modestly increase most registrants' costs and compliance burdens. A requirement to provide additional information for longer periods of time than currently required in documents filed under the Securities Act, Exchange Act and Investment Company Act should not significantly increase the burden on company resources, since many registrants and others already are required to gather information regarding the backgrounds of directors, officers and others. It appears, however, that any additional expense may be justified in view of the material information that would be made available to investors.

VII. Summary of Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments to Item 401 of Regulations S–K and S–B, the Regulation A offering circular (Model B), Schedules 13D, 13E–3, 14A and 14D–1, Forms N–1A, N–2, N–3, N–4, N–5, N–8B–2, N–8B–3 and N–8B–4, and Regulation E. The analysis notes that the proposed amendments are intended to provide investors with more information regarding the background of those who exercise control over the affairs of public companies.

As discussed more fully in the analysis, the proposed changes would affect persons that are small entities, as defined by the Commission's rules. It is expected that increased reporting, recordkeeping and compliance burdens would result from the changes. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the revised legal proceedings disclosure provisions.

As stated in the analysis, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As more fully discussed in the analysis, the alternatives were either addressed in the proposals, inconsistent with the purposes of the federal securities laws, or otherwise without justification.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed revisions are adopted. A

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[120] In the case of an investment company registered as a separate account on Forms N–3, N–4 or N–8B–2, disclosure would be required of legal proceedings involving the directors, officers and employees of the sponsoring insurance company, or its affiliates, who participate directly in the management or administration of the separate account.

[121] 15 U.S.C. 80a–2(a)(3). An affiliated person is: (i) a person who directly or indirectly owns or controls more than 5% of the voting securities of a person; (ii) a person of which more than 5% of the voting securities is owned or controlled by a person; (iii) a person that is controlled, controlled by, or under common control with, a person; (iv) any officer, director, partner, or employees of a person; (v) if such person is an investment company, the investment adviser or any member of the advisory board thereof; and (vi) if the person is an unincorporated investment company without a board of directors, the depositor thereof.

[122] The term "managerial persons" is similar to, but not the same as, the term "management person" used in Rule 206(4)–4 under the Investment Advisers Act [17 CFR 275.206(4)–4]. Rule 206(4)–4 requires investment advisers to disclose to their clients certain financial and disciplinary information about the investment adviser or a management person of the adviser. For purposes of Rule 206(4)–4, a management person is defined as a person who controls the adviser or determines the general investment advice given to clients.

[123] This disclosure would include a fund's portfolio manager as well as any member of a portfolio management committee.

[124] For a large company with investment advisory services and other types of businesses, monitoring and reporting legal proceedings about all persons affiliated with the company could be costly and result in lengthy disclosure.

[125] The proposed legal proceeding disclosure would require information concerning persons, otherwise barred under section 9(a) of the Investment Company Act [15 U.S.C. 80a–9(a)], who have been permitted by the Commission under section 9(c) of the Investment Company Act [15 U.S.C. 80a–9(c)] to be associated with an investment company.

[126] Proposed item 22(a)(3)(vii).

[127] 15 U.S.C. 77s(a).

[128] 15 U.S.C. 78w(a).

[129] 15 U.S.C. 80a–37(a).

copy of the analysis may be obtained by contacting James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009.

VIII. Statutory Basis for Rules and Forms

The Commission is proposing amendments to Item 401 of Regulations S–K and S–B, Regulation A and Regulation E pursuant to Sections 3(b), 6, 7, 8, 10, and 19 of the Securities Act. Other amendments to Item 401 and amendments to Schedules 13D, 13E–3, 14A and 14D–1 are proposed pursuant to Sections 12, 13, 14, 15(d) and 23 of the Exchange Act. The Commission also is proposing amendments to the proxy rules applicable to investment companies and to investment company registration statement forms pursuant to Sections 8(b), 20(a) and 38(a) of the Investment Company Act.

List of Subjects in 17 CFR Part 228, 229, 230, 239, 240, and 274

Investment companies, Registration requirements, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. Section 228.401 (Item 401) is amended by revising paragraph (d) to read as follows:

§ 228.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(d) *Involvement in certain legal proceedings.*

(1) Describe any of the actions listed below, not subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect, taken during the past 10 years that involved any executive officer, director or person nominated to become a director of the small business issuer:

(i) *Bankruptcy or other insolvency proceedings.* The initiation of any federal, state or foreign bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, fiscal agent or similar officer for the business or assets of any such person, any partnership in which such person was a general partner at or within two years before the time of such initiation or appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of such initiation or appointment. The foregoing shall be described if material to an investment or voting decision.

(ii) *Criminal proceedings.* The conviction of such person in a federal, state or foreign criminal proceeding (including convictions entered on a plea of nolo contendere), or the naming of any such person as the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses).

(iii) *Civil and administrative proceedings.* The issuance in a federal, state or foreign civil or administrative proceeding of:

(A) A finding, order, judgment, decree or sanction to which such person was subject, relating to an alleged violation of:

(*1*) Any securities or commodities law or regulation, or

(*2*) Any law or regulation respecting financial institutions, insurance companies, or fiduciary duties owed to a partnership, corporation, business trust or similar business entity, including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(*3*) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;

(B) An order enjoining or otherwise limiting such person from engaging in any type of business practice.

(iv) *Self-regulatory organization proceedings. The imposition of a sanction against such person by:*

(A) A self-regulatory organization, as defined in Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)];

(B) A contract market designated pursuant to section 5 of the Commodity Exchange Act [7 U.S.C. 7];

(C) A futures association registered under section 17 of such Act [7 U.S.C. 21]; or

(D) Any substantially equivalent foreign authority or organization.

(2) *Control persons and promoters.* Any small business issuer that has not been subject to the reporting requirements of Sections 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the 12 months immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable also shall describe any action enumerated in this paragraph (d), for the time period specified herein, that involved a control person of the small business issuer. If any such issuer was organized within the past five years, comparable disclosure is required with regard to any promoter of the small business issuer.

Instructions to Paragraph (d) of Item 401

1. For purposes of computing the 10 year period referred to in this paragraph, the disclosure period applicable to a final conviction, order, judgment, decree or sanction shall begin with its date of entry. The disclosure period applicable to a preliminary order shall commence when the rights of appeal from such order have lapsed. Any conviction, order, judgment, decree or sanction that is appealed shall continue to be disclosed until ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, at which time disclosure shall no longer be required. With respect to bankruptcy and insolvency proceedings, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. In the case of receiverships and conservatorships, the computation date shall be the date the receiver or conservator was appointed.

2. The small business issuer is permitted to explain any mitigating circumstances associated with actions reported pursuant to this paragraph.

3. For purposes of this paragraph, the term *financial institution* includes any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any federal or state credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution.

4. If the information called for by this paragraph is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

5. If the small business issuer is a partnership or a trust, the information required by this paragraph shall be provided with respect to each general partner of the partnership, each trustee of the trust, and any other person providing services to such entities that are comparable to those provided by the persons identified in this paragraph. Where management services are provided the small business issuer by outside parties pursuant to a management or service contract or otherwise, the information called

for by this paragraph shall be disclosed with respect to the persons identified in this paragraph, as well as any other person providing comparable services on behalf of the small business issuer.

6. Paragraph (d)(2) shall not apply to any subsidiary of a small business issuer that has been reporting pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the 12 months immediately prior to the filing of the registration statement, report or statement.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The general authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11, unless otherwise noted.

* * * * *

4. The authority citation following § 229.401 is removed.

5. Section 229.401 (Item 401) is amended by revising paragraph (f) and by removing paragraph (g) to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(f) *Involvement in certain legal proceedings.*

(1) Describe any of the actions listed below, not subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect, taken during the past 10 years that involved any executive officer, director or person nominated to become a director of the registrant:

(i) *Bankruptcy or other insolvency proceedings.* The initiation of any federal, state or foreign bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, fiscal agent or similar officer for the business or assets of any such person, any partnership in which such person was a general partner at or within two years before the time of such initiation or appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of such initiation or appointment. The foregoing shall be described if material to an investment or voting decision.

(ii) *Criminal proceedings.* The conviction of such person in a federal, state or foreign criminal proceeding (including convictions entered on a plea of nolo contendere), or the naming of any such person as the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses).

(iii) *Civil and administrative proceedings.* The issuance in a federal, state or foreign civil or administrative proceeding of:

(A) A finding, order, judgment, decree or sanction to which such person was subject, relating to an alleged violation of:

(*1*) Any securities or commodities law or regulation, or

(*2*) Any law or regulation respecting financial institutions, insurance companies, or fiduciary duties owed to a partnership, corporation, business trust or similar business entity, including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(*3*) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;

(B) An order enjoining or otherwise limiting such person from engaging in any type of business practice.

(iv) *Self-Regulatory Organization proceedings.* The imposition of a sanction against such person by:

(A) A self-regulatory organization, as defined in Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)];

(B) A contract market designated pursuant to section 5 of the Commodity Exchange Act [7 U.S.C. 7];

(C) A futures association registered under section 17 of such Act [7 U.S.C. 21]; or

(D) Any substantially equivalent foreign authority or organization.

(2) *Control persons and promoters.* Any registrant that has not been subject to the reporting requirements of Sections 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the 12 months immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable also shall describe any action enumerated in this paragraph (f), for the time period specified herein, that involved a control person of the registrant. If any such registrant was organized within the past five years, comparable disclosure is required with regard to any promoter of the registrant.

Instructions to Paragraph (f) of Item 401

1. For purposes of computing the 10 year period referred to in this paragraph, the disclosure period applicable to a final conviction, order, judgment, decree or sanction shall begin with its date of entry. The disclosure period applicable to a preliminary order shall commence when the rights of appeal from such order have lapsed. Any conviction, order, judgment, decree or sanction that is appealed shall continue to be disclosed until ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, at which time disclosure shall no longer be required. With respect to bankruptcy and insolvency proceedings, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. In the case of receiverships and conservatorships, the computation date shall be the date the receiver or conservator was appointed.

2. The registrant is permitted to explain any mitigating circumstances associated with actions reported pursuant to this paragraph.

3. For purposes of this paragraph, the term *financial institution* includes any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any federal or state credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution.

4. If the information called for by this paragraph is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

5. If the registrant is a partnership or a trust, the information required by this paragraph shall be provided with respect to each general partner of the partnership, each trustee of the trust, and any other person providing services to such entities that are comparable to those provided by the persons identified in this paragraph. Where management services are provided the registrant by outside parties pursuant to a management or service contract or otherwise, the information called for by this paragraph shall be disclosed with respect to the persons identified in this paragraph, as well as any other person providing comparable services on behalf of the registrant.

6. Paragraph (f)(2) shall not apply to any subsidiary of a registrant that has been reporting pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the 12 months immediately prior to the filing of the registration statement, report or statement.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

6. The general authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w,

78ll(d), 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

7. By amending § 230.610a by adding paragraph (g) to Item 4 of Schedule A of Regulation E, to read as follows:

§ 230.610a Schedule A: Contents of offering circular for small business investment companies; Schedule B: Contents of offering circular for business development companies.

Schedule A—Contents of Offering Circular for Small Business Investment Companies

* * * * *

Item 4. Management and Certain Security Holders of the Issuer

* * * * *

(g) Provide the information required by Item 401(f)(1) of Regulation S–K [17 CFR 229.401(f)(1)] as to each director, officer, and advisory board member of the issuer, and each managerial person of the investment adviser of the issuer.

Instruction. For the purposes of this Item 4(g), *managerial person* means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(3)]) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the issuer.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The general authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30, and 80a–37 unless otherwise noted.

* * * * *

9. By revising Part II, Model B, Item 8, paragraph (d) of Form 1–A (referenced in § 239.90) to read as follows:

Note.—The text of Form 1–A does not and the amendment will not appear in the Code of Federal Regulations.

Form 1–A.—Regulation A Offering Statement Under the Securities Act of 1933

* * * * *

PART II—OFFERING CIRCULAR

* * * * *

OFFERING CIRCULAR MODEL B

* * * * *

Item 8. Directors, Executive Officers and Significant Employees

* * * * *

(d) *Involvement in certain legal proceedings.*

(1) Describe any of the actions listed below, not subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect, taken during the past 10 years that involved any executive officer, director or person nominated to become a director of the issuer:

(i) *Bankruptcy or other insolvency proceedings.* The initiation of any federal, state or foreign bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, fiscal agent or similar officer for the business or assets of any such person, any partnership in which such person was a general partner at or within two years before the time of such initiation or appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of such initiation or appointment. The foregoing shall be described if material to an investment or voting decision.

(ii) *Criminal proceedings.* The conviction of such person in a federal, state or foreign criminal proceeding (including convictions entered on a plea of nolo contendere), or the naming of any such person as the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses).

(iii) *Civil and administrative proceedings.* The issuance in a federal, state or foreign civil or administrative proceeding of:

(A) A finding, order, judgment, decree or sanction to which such person was subject, relating to an alleged violation of:

(*1*) Any securities or commodities law or regulation, or

(*2*) Any law or regulation respecting financial institutions, insurance companies, or fiduciary duties owed to a partnership, corporation, business trust or similar business entity, including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(*3*) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;

(B) An order enjoining or otherwise limiting such person from engaging in any type of business practice.

(iv) *Self-Regulatory Organization proceedings.* The imposition of a sanction against such person by:

(A) A self-regulatory organization, as defined in Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)];

(B) A contract market designated pursuant to section 5 of the Commodity Exchange Act [7 U.S.C. 7];

(C) A futures association registered under section 17 of such Act [7 U.S.C. 21]; or

(D) Any substantially equivalent foreign authority or organization.

Instructions to Paragraph (d)

1. For purposes of computing the 10 year period referred to in this paragraph, the disclosure period applicable to a final conviction, order, judgment, decree or sanction shall begin with its date of entry. The disclosure period applicable to a preliminary order shall commence when the rights of appeal from such order have lapsed. Any conviction, order, judgment, decree or sanction that is appealed shall continue to be disclosed until ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, at which time disclosure shall no longer be required. With respect to bankruptcy and insolvency proceedings, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. In the case of receiverships and conservatorships, the computation date shall be the date the receiver or conservator was appointed.

2. The issuer is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

3. For purposes of this paragraph, the term *financial institution* includes any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any federal or state credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

10. The general authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

11. § 240.13d–101 (Schedule 13D) is amended by: revising row 5 of the cover page and instruction 5 for the cover page; revising the introductory text of Item 2; revising paragraph (d) of Item 2; removing paragraph (e) of Item 2; and redesignating paragraph (f) of Item 2 as paragraph (e), to read as follows:

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

Schedule 13D

* * * * *

(5) Check if disclosure of legal proceedings is required pursuant to Item 2(d).

* * * * *

Instructions for Cover Page

* * * * *

(5) If disclosure of legal proceedings is required pursuant to Item 2(d), row 5 should be checked.

* * * * *

Item 2. Identity and Background.

If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal business, the address of its principal office and the information required by (d) of this Item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (a) through (e) of this Item with respect to such person(s).

* * * * *

(d) *Involvement in certain legal proceedings.*

(1) Describe any of the actions listed below, not subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect, taken during the past 10 years that involved any such person(s):

(i) *Bankruptcy or other insolvency proceedings.* The initiation of any federal, state or foreign bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, fiscal agent or similar officer for the business or assets of any such person, any partnership in which such person was a general partner at or within two years before the time of such initiation or appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of such initiation or appointment. The foregoing shall be described if material to an investment or voting decision.

(ii) *Criminal proceedings.* The conviction of such person in a federal, state or foreign criminal proceeding (including convictions entered on a plea of nolo contendere), or the naming of any such person as the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses).

(iii) *Civil and administrative proceedings.* The issuance in a federal, state or foreign civil or administrative proceeding of:

(A) A finding, order, judgment, decree or sanction to which such person was subject, relating to an alleged violation of:

(*1*) Any securities or commodities law or regulation, or

(*2*) Any law or regulation respecting financial institutions, insurance companies, or fiduciary duties owed to a partnership, corporation, business trust or similar business entity, including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(*3*) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;

(B) An order enjoining or otherwise limiting such person from engaging in any type of business practice.

(iv) *Self-Regulatory Organization proceedings.* The imposition of a sanction against such person by:

(A) A self-regulatory organization, as defined in Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)];

(B) A contract market designated pursuant to section 5 of the Commodity Exchange Act [7 U.S.C. 7];

(C) A futures association registered under section 17 of such Act [7 U.S.C. 21]; or

(D) Any substantially equivalent foreign authority or organization.

Instructions to Paragraph (d).

1. For purposes of computing the 10 year period referred to in this paragraph, the disclosure period applicable to a final conviction, order, judgment, decree or sanction shall begin with its date of entry. The disclosure period applicable to a preliminary order shall commence when the rights of appeal from such order have lapsed. Any conviction, order, judgment, decree or sanction that is appealed shall continue to be disclosed until ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, at which time disclosure shall no longer be required. With respect to bankruptcy and insolvency proceedings, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. In the case of receiverships and conservatorships, the computation date shall be the date the receiver or conservator was appointed.

2. The person filing this schedule is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

3. For purposes of this paragraph, the term *financial institution* includes any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any Federal or State credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution.

* * * * *

12. § 240.13e–100 (Schedule 13E–3) is amended by: revising the section heading; revising the introductory paragraph of Item 2; revising paragraph (e) of Item 2; removing paragraph (f) of Item 2; and redesignating paragraph (g) of Item 2 as paragraph (f), to read as follows:

§ 240.13e–100 Schedule 13E–3, Rule 13e–3 transaction statement pursuant to section 13(e) of the Securities Exchange Act of 1934 and rule 13e–3 [§ 240.13e–3] thereunder.

Rule 13e–3 Transaction statement

* * * * *

Item 2. Identity and Background. If the person filing this statement is the issuer of the class of equity securities which is the subject of the Rule 13e–3 transaction, make a statement to that effect. If this statement is being filed by an affiliate of the issuer which is other than a natural person or if any person enumerated in Instruction C to this statement is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal executive offices and provide the information required by paragraph (e) of this Item. If this statement is being filed by an affiliate of the issuer who is a natural person or if any person enumerated in Instruction C of this statement is a natural person, provide the information required by paragraphs (a) through (f) of this Item with respect to such person(s).

* * * * *

(e) *Involvement in certain legal proceedings.*

(1) Describe any of the actions listed below, not subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect, taken during the past 10 years that involved any such person(s):

(i) *Bankruptcy or other insolvency proceedings.* The initiation of any federal, state or foreign bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, fiscal agent or similar officer for the business or assets of any such person, any partnership in which such person was a general partner at or within two years before the time of such initiation or appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of such initiation or appointment. The foregoing shall be described if material to an investment or voting decision.

(ii) *Criminal proceedings.* The conviction of such person in a federal, state or foreign criminal proceeding (including convictions entered on a plea of nolo contendere), or the naming of any such person as the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses).

(iii) *Civil and administrative proceedings.* The issuance in a federal, state or foreign civil or administrative proceeding of:

(A) A finding, order, judgment, decree or sanction to which such person was subject, relating to an alleged violation of:

(*1*) Any securities or commodities law or regulation, or

(*2*) Any law or regulation respecting financial institutions, insurance companies, or fiduciary duties owed to a partnership, corporation, business trust or similar business entity, including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-

and-desist order, or removal or prohibition order; or

(3) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;

(B) An order enjoining or otherwise limiting such person from engaging in any type of business practice.

(iv) *Self-regulatory organization proceedings.* The imposition of a sanction against such person by:

(A) A self-regulatory organization, as defined in Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)];

(B) A contract market designated pursuant to section 5 of the Commodity Exchange Act [7 U.S.C. 7];

(C) A futures association registered under section 17 of such Act [7 U.S.C. 21]; or

(D) Any substantially equivalent foreign authority or organization.

Instructions to Paragraph (e)

1. For purposes of computing the 10 year period referred to in this paragraph, the disclosure period applicable to a final conviction, order, judgment, decree or sanction shall begin with its date of entry. The disclosure period applicable to a preliminary order shall commence when the rights of appeal from such order have lapsed. Any conviction, order, judgment, decree or sanction that is appealed shall continue to be disclosed until ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, at which time disclosure shall no longer be required. With respect to bankruptcy and insolvency proceedings, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. In the case of receiverships and conservatorships, the computation date shall be the date the receiver or conservator was appointed.

2. The person filing this schedule is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

3. For purposes of this paragraph, the term *financial institution* includes any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any federal or state credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution.

4. While negative answers to Item 2(e) are required in this schedule, they need not be furnished to security holders.

* * * * *

13. § 240.14a–101 (Schedule 14A) is amended by revising paragraph (b)(1)(iii) of Item 5 and by amending Item 22 by adding a new paragraph (a)(3)(vi) and revising paragraph (b)(4) to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 5. Interest of certain Persons in Matters to be Acted Upon

* * * * *

(b) Solicitation subject to Rule 14a–11 (§ 240.14a–11 of this chapter). * * *

(1) * * *

(iii) State the information required by Item 401(f) of Regulation S–K (§ 229.401(f) of this chapter).

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(a) * * *

(3) * * *

(vi) If action is to be taken with respect to the election of directors or the approval of an advisory contract, provide the information required by Item 401(f)(1) of Regulation S–K (§ 229.401(f)(1)) as to each director, officer, and advisory board member of the Fund, and each managerial person of the investment adviser of the Fund.

Instruction. For the purposes of this Item 22(a)(3)(vi), "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the issuer.

* * * * *

(b) * * *

(4) Provide in tabular form, to the extent practicable, the information required by Items 401 (except the information required by paragraph (f) of Item 401, which is required pursuant to paragraph (a)(3)(vi) of this Item 22), 404 (a) and (c), and 405 of Regulation S–K (§§ 229.401, 229.404, and 229.405 of this chapter.

* * * * *

14. § 240.14d–100 (Schedule 14D–1) is amended by: revising row 5 of the cover page and instruction 5 for the cover page; revising the introductory paragraph of Item 2, revising paragraph (e) of Item 2, removing paragraph (f) of Item 2; and redesignating paragraph (g) of Item 2 as paragraph (f), to read as follows:

§ 240.14d–100 Schedule 14D–1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

Schedule 14D–1

* * * * *

(5) Check if disclosure of legal proceedings is required pursuant to Item 2(e).

* * * * *

Instructions for Cover Page

* * * * *

(5) If disclosure of legal proceedings is required pursuant to Item 2(e) of Schedule 14D–1, row 5 should be checked.

* * * * *

Item 2. Identity and Background. If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal business, the address of its principal office and the information required by paragraph (e) of this Item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in paragraphs (a) through (f) of this Item with respect to such person(s).

* * * * *

(e) *Involvement in certain legal proceedings.*

(1) Describe any of the actions listed below, not subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect, taken during the past 10 years that involved any such person(s):

(i) *Bankruptcy or other insolvency proceedings.* The initiation of any federal, state or foreign bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, fiscal agent or similar officer for the business or assets of any such person, any partnership in which such person was a general partner at or within two years before the time of such initiation or appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of such initiation or appointment. The foregoing shall be described if material to an investment or voting decision.

(ii) *Criminal proceedings.* The conviction of such person in a federal, state or foreign criminal proceeding (including convictions entered on a plea of nolo contendere), or the naming of any such person as the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses).

(iii) *Civil and administrative proceedings.* The issuance in a federal, state or foreign civil or administrative proceeding of:

(A) A finding, order, judgment, decree or sanction to which such person was subject, relating to an alleged violation of:

(1) Any securities or commodities law or regulation, or

(2) Any law or regulation respecting financial institutions, insurance companies, or fiduciary duties owed to a partnership, corporation, business trust or similar business entity, including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(3) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;

(B) An order enjoining or otherwise limiting such person from engaging in any type of business practice.

(iv) *Self-Regulatory Organization proceedings.* The imposition of a sanction against such person by:

(A) A self-regulatory organization, as defined in Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)];

(B) A contract market designated pursuant to section 5 of the Commodity Exchange Act [7 U.S.C. 7];

(C) A futures association registered under section 17 of such Act [7 U.S.C. 21]; or

(D) Any substantially equivalent foreign authority or organization.

Instructions to Paragraph (e).

1. For purposes of computing the 10 year period referred to in this paragraph, the disclosure period applicable to a final conviction, order, judgment, decree or sanction shall begin with its date of entry. The disclosure period applicable to a preliminary order shall commence when the rights of appeal from such order have lapsed. Any conviction, order, judgment, decree or sanction that is appealed shall continue to be disclosed until ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, at which time disclosure shall no longer be required. With respect to bankruptcy and insolvency proceedings, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. In the case of receiverships and conservatorships, the computation date shall be the date the receiver or conservator was appointed.

2. The person filing this schedule is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

3. For purposes of this paragraph, the term *financial institution* includes any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any federal or state credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution.

4. While negative answers to Item 2(e) are required in this schedule, they need not be furnished to security holders.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

15. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

16. By amending Item 5 of Form N–1A (referenced in §§ 239.15A and 274.11A) to revise the introductory text, to redesignate paragraphs (d), (e), (f), and (g) as (e), (f), (g), and (h) and to add paragraph (d) to read as follows:

Note: The text of Form N–1A does not and the amendments will not appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Item 5 Management of the Fund

Describe concisely the management and business of the Registrant, including:

(a) * * *

(b) * * *

(c) * * *

d. Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each director, executive officer and advisory board member of the Registrant, and each managerial person of the investment adviser.

Instruction. For the purposes of this Item 5(d), "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the Registrant.

* * * * *

17. By amending Item 9 of Form N–2 (referenced in §§ 239.14 and 274.11a–1) to revise the introductory text of paragraph 1, to redesignate paragraphs 1.d, 1.e, 1.f, and 1.g as paragraphs 1.e, 1.f, 1.g, and 1.h, to add a paragraph 1.d, and to add "9.3" after the word "item" in the first clause of the Instruction to paragraph 3 to read as follows:

Note: The text of Form N–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–2

* * * * *

Item 9. Management

1. *General:* Describe concisely the management and business of the Registrant, including:

(a) * * *

(b) * * *

(c) * * *

d. Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each director, executive officer and advisory board member of the Registrant, and each managerial person of the investment adviser.

Instruction. For the purposes of this Item 1.d, "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the Registrant.

18. By amending Item 6 of Form N–3 (referenced in §§ 239.17a and § 274.11b) to revise the introductory text, to redesignate paragraphs (c) and (d) as (d) and (e), and to add paragraph (c) to read as follows:

Note: The text of Form N–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–3

* * * * *

Item 6. Management

Describe concisely the management and business of the Registrant, including:

(a) * * *

(b) * * *

(c) Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each director, executive officer and advisory board member of the Registrant, and each managerial person of the investment adviser.

Instruction. For the purposes of this Item 6(c), "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the Registrant.

* * * * *

19. By amending Item 5 of Form N–4 (referenced in §§ 239.17b and 274.11c) to redesignate paragraph (f) as (g) and to add paragraph (f) to read as follows:

Note: The text of Form N–4 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–4

* * * * *

Item 5. General Description of Registrant, Depositor, and Portfolio Companies

* * * * *

(f) Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each director, officer and employee of the depositor, or its affiliates, who participates directly in the management or administration of the separate account.

* * * * *

20. By amending Form N–5 (referenced in §§ 239.24 and 274.5) to designate the text of Item 11 as paragraph (a) and to add paragraph (b), to designate the text of Item 12 as paragraph (a) and to add paragraph (b), and to add paragraph (d) to Item 16 to read as follows:

Note: The text of Form N–5 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–5

* * * * *

Item 11. Directors and Executive Officers

(a) * * *

(b) Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each director and executive officer of the Registrant.

Item 12 Members of Advisory Board of Registrant

(a) * * *

(b) Provide the information required by Item 401(f)(1) of Regulation S–K [229.401(f)(1)] as to each member of the registrant's advisory board.

* * * * *

Item 16. Investment Advisers.

* * * * *

(d) Provide the information required by Item 401(f)(1) of Regulation S–K [229.401(f)(1)] as to each managerial person of each investment adviser.

Instruction: For the purposes of this Item 16(d), "managerial person" means any

affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the registrant.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

21. By amending Item 28 of Form N–8B–2 (referenced in § 274.12) to add paragraph (c) to read as follows:

Note: The text of Form N–8B–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–8B–2

* * * * *

Officials and Affiliated Persons of Depositor

28. (a) * * *

(c) Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each managerial person of the depositor.

Instruction: For the purposes of this Item 28(c), "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the registrant.

* * * * *

22. By amending Item 27 of Form N–8B–3 (referenced in § 274.13) to add paragraph (c) to read as follows:

Note: The text of Form N–8B–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–8B–3

* * * * *

Officials and Affiliated Persons of Depositor

26. (a) * * *

(c) Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each managerial person of the depositor.

Instruction: For the purposes of this Item 26(c), "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the registrant.

* * * * *

23. By amending Form N–8B–4 (referenced in § 274.14) to add paragraph (d) to Item 29 and to add paragraph (c) to Item 34 to read as follows:

Note: The text Form N–8B–4 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–8B–4

* * * * *

Item 29. Investment Advisers and Agreements Therewith

* * * * *

(d) Provide the information required by Item 401(f)(f) of Regulation S–K [§ 229.401(f)(1)] as to each managerial person of each investment adviser of the registrant.

Instruction: For the purposes of this Item 29(d), "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the registrant.

* * * * *

Item 34. Directors, Officers and Advisory Board Members

* * * * *

(c) Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each person named pursuant to paragraph (a).

* * * * *

By the Commission.

Dated: November 1, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27486 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–20–1–6828; FRL–5102–7]

Transportation Conformity; Approval of Petition for Exemption From Nitrogen Oxides Provisions, Nonclassifiable Ozone Nonattainment Areas, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of a petition from the State of Louisiana requesting that the nonclassifiable ozone nonattainment areas in the State be exempted from the requirement to perform the oxides of nitrogen (NO_X) portion of the build/no-build test required by the new Federal transportation conformity rule. This petition for exemption was submitted on August 5, 1994.

DATES: Comments on this proposed action must be received in writing by December 7, 1994.

ADDRESSES: Comments should be mailed to Guy R. Donaldson, Acting Chief, Air Planning Section (6T–AP), US EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the above location and at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, TX 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, Air Quality Division, P.O. Box 82135, Baton Rouge, LA 70884–2135.

Anyone wishing to review this petition at the US EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

Background

The transportation conformity final rule entitled "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under title 23 U.S.C. or the Federal Transit Act," was published in the **Federal Register** on November 24, 1993 (58 FR 62188). This action was required under section 176(c)(4) of the Clean Air Act (CAA) as amended in 1990.

The transportation conformity rule requires each ozone nonattainment area and maintenance area to perform a regional analysis of motor vehicle volatile organic compound and NO_X emissions from any planned transportation project. This analysis must demonstrate that the emissions which would result from the proposed transportation system, if the transportation plan were implemented, are within the total allowable level of emissions described in the motor vehicle emissions budget.

Until an attainment demonstration or maintenance plan is approved by the

EPA, this emissions analysis must pass the build/no-build test. This analysis must demonstrate that the emissions from the planned transportation project, if implemented, would be less than the emissions without the planned transportation project. Thus, the build/no-build test is intended to ensure that the transportation plan contributes to annual emissions reductions consistent with the CAA until such time as the attainment demonstration or maintenance plan is approved. For further information concerning the Federal transportation conformity requirements, see 40 CFR part 51, subpart T and 40 CFR part 93, subpart A.

Transportation Conformity and Section 182(f) Exemptions

On June 17, 1994, the EPA published a national interpretation of transportation conformity and Section 182(f) exemptions entitled "Transportation Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions" (59 FR 31238) (General Preamble). This General Preamble clarifies and interprets how ozone nonattainment areas classified as less than marginal, which have air quality monitoring data demonstrating attainment of the National Ambient Air Quality Standards (NAAQS) for ozone, may be exempted from certain NO_X requirements.

As discussed in the General Preamble, both the transportation conformity rule and CAA section 182(f)(1)(A) state that NO_X requirements shall not apply in nonattainment areas if the Administrator determines that additional reductions of NO_X would not contribute to attainment of the NAAQS for ozone in the area. The EPA also issued two guidance documents on section 182(f) exemptions. These two documents, "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992" dated September 17, 1993, and "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)" dated December 1993, state that if an area has attained the ozone standard, additional NO_X reductions would not contribute to attainment.

As explained in the General Preamble, the EPA believes that a demonstration of attainment made through adequate air quality monitoring data, consistent with 40 CFR part 58 and recorded in the EPA's Aerometric Information Retrieval System (AIRS), can qualify an area as a "clean data area". Further, the EPA believes these "clean data areas" can request an exemption from the NO_X provisions of transportation conformity. The section 182(f) exemption will be conditioned upon the area's monitoring data continuing to demonstrate attainment after an exemption is granted. If the EPA determines that an exempted area has violated the ozone standard, the section 182(f) exemption will be rescinded. Any decision to rescind the NO_X exemption would be based on an evaluation of the air quality data recorded in AIRS. Past conformity determinations and transportation plans would not be affected, but new conformity determinations would be subject to the NO_X provisions of the conformity rule.

Analysis of State Submittal

The State of Louisiana has ten parishes designated as nonclassifiable ozone nonattainment areas. Nonclassifiable ozone nonattainment areas had air quality data which demonstrated attainment of the ozone standard, but had not petitioned the EPA for redesignation to attainment before the Clean Air Act Amendments (CAAA) were passed. These parishes were nonattainment prior to the 1990 CAAA, and retained their ozone nonattainment designations with the passage of the CAAA. Transitional areas possessed the required three years of air quality data, while incomplete data areas had less than the required three years of data.

Beauregard, Grant, Lafourche, St. James and St. Mary Parishes were classified as incomplete data areas for ozone on November 6, 1991 (56 FR 56694). The New Orleans Consolidated Metropolitan Statistical Area contained four parishes which were designated as transitional ozone nonattainment areas on November 6, 1991: Jefferson, Orleans, St. Bernard and St. Charles. Lafayette Parish was also classified as a transitional ozone nonattainment area on November 6, 1991.

On August 5, 1994, the State of Louisiana submitted a petition to the EPA requesting that the ten parishes listed above be exempted from the requirement to perform the NO_X portion of the build/no-build test required by the new transportation conformity rule. This exemption request is pursuant to the recently published General Preamble for transportation conformity NO_X exemptions.

The exemption request was based on air monitoring data which demonstrated that the NAAQS for ozone was attained in each of these nonclassifiable ozone nonattainment areas for the three years prior to the petition. The Air quality data was verified as quality assured in accordance with monitoring requirements specified in 40 CFR part 58, and demonstrates that the ozone standard has been maintained in these areas.

Proposed Rulemaking Action

The EPA has evaluated the State's exemption request for consistency with the CAA, EPA regulations, and EPA policy. The EPA believes that the exemption request and monitoring data qualifies the parishes of Beauregard, Grant, Lafayette, Lafourche, Jefferson, Orleans, St. Bernard, St. Charles, St. James, and St. Mary as "clean data areas". In addition, the EPA has determined that the exemption request meets the requirements and policy set forth in the General Preamble for NO_X exemptions from the build/no-build test for transportation conformity, and today is proposing approval of Louisiana's request for exemption from the NO_X build/no-build test of transportation conformity for these parishes. The section 182(f) exemption will be conditioned upon the area's monitoring data continuing to demonstrate attainment after the exemption has been granted. If the EPA later determines that any of these parishes has violated the ozone standard, the section 182(f) exemption will be rescinded for that parish. Past conformity determinations and transportation plans would not be affected, but new conformity determinations would then be subject to the NO_X provisions of the conformity rule.

The EPA has reviewed this request for exemption from the NO_X provisions of the Federal transportation conformity rule for conformance with the provisions of the 1990 CAAA enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Because an exemption from the Federal transportation conformity rule does not impose any new requirements,

I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (Union Electric Co. v. U.S.E.P.A., 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2)).

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 26, 1994.

William B. Hathaway,

Acting Regional Administrator (6A).

[FR Doc. 94–27541 Filed 11–4–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–123; FCC 94–266]

Radio Broadcast Services; Television Program Practices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its initiation of a rulemaking proceeding to assess the legal and policy justifications, in light of current economic and technological conditions, for the Prime Time Access Rule, and to consider the continued need for the rule in its current form.

DATES: Comments are due on or before January 6, 1995, and reply comments are due on or before February 6, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz and Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 94–123, adopted October 20, 1994, and released October 25, 1994. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, D.C. 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission initiated a rulemaking proceeding to assess, in light of current economic and technological conditions, the legal and policy justifications for the Prime Time Access Rule ("PTAR"), Section 73.658(k) of the Commission's Rules, and to consider the continued need for the rule in its current form. The rule generally prohibits network-affiliated stations in the top 50 television markets from broadcasting more than three hours of network or former network ("off-network") programs during the four prime time viewing hours (*i.e.*, 7 to 11 p.m. Eastern and Pacific times; 6 to 11 p.m. Central and Mountain times). The rule also contains exemptions for certain types of programming (*e.g.*, special news, documentary, children's and sports programming).

2. PTAR was initially promulgated in 1970 in response to the concern that the three major television networks—ABC, CBS and NBC—dominated the program production market, controlled much of the video fare presented to the public, and inhibited the development of competing program sources. The Commission believed that PTAR would increase the level of competition in the independent production of programs, reduce the networks' control over their affiliates' programming decisions, and increase the diversity of programs available to the public.

3. The Commission believes that as the video marketplace has developed and the major networks' power has declined in the years since PTAR was established, an overall review of the rule is now appropriate. In this regard, on April 12, 1994, the Commission issued a *Public Notice* soliciting public comment on various filings seeking modification or elimination of PTAR. Parties filing comments thus far, however, have failed to present a rigorous economic framework for analysis, supported by adequate data, that will enable the Commission to assess the competitive effects of the rule and its efficacy in achieving both competition and non-competition-based public interest goals. Therefore, this *Notice of Proposed Rule Making* proposes a framework to evaluate the continued efficacy of the rule.

4. The analytical framework set forth by the Commission recognizes that in 1970, there was a strong cast for taking government action to correct the effects of a competitively unbalanced market. Accordingly, the FCC established PTAR. However, with the development of alternative forms of video distribution, the growth of the broadcast industry (including increased competition among networks for affiliates), and the increase in the number and types of entities creating nationally distributed video programming, the case for PTAR must be revisited. The analytical framework proposed in this *Notice* provides a means for evaluating the factual and economic assumptions underlying PTAR, to ascertain whether the rule operates to achieve its intended effects, and what unintended effects it may also cause. In addition, the Commission will use the framework to evaluate whether the intended and unintended effects further the attainment of legitimate goals in today's world. The ultimate decision to retain, modify or eliminate the rule will turn on a weighing of its costs against its benefits.

5. More specifically, the analytical framework seeks comment on the validity of the following three basic ways PTAR is said to alter the competitive opportunities in the relevant markets for the public good. First, by carving out a portion of prime time to be used for non-network use, the rule made it easier for independent producers to sell their programming to the more successful stations in the top markets (*i.e.*, affiliates of the three major networks). Among the intended effects was the goal of strengthening existing independent producers and encouraging entry of new ones. From an economic perspective, the Commission had anticipated that the decrease in supply of programming available to affiliates (caused by PTAR's ban on network and off-network programming) would increase prices paid for independently produced programming, thus acting as a spur for greater production and new entry. Thus, the Commission had predicted that the rule would increase the net amount of diverse programming available to the viewing public and create new competitors to the existing three networks. The *Notice* asks commenters to assess this dynamic, raising such questions as: (1) Whether this enhanced opportunity increases the net amount of independently produced programs available to the public; (2) whether this opportunity increases the

net number of independent program producers serving the market; and (3) whether the limit placed by this opportunity on an affiliate's ability to carry network or off-network programming during the access period reduces the economic value of network programming aired during the other parts of prime time, by limiting the potential buyers for these programs after the network run is complete, thereby depressing the total return on these programs.

6. Second, the rule sought to reduce the networks' role in dictating their affiliates' programming choices, by forbidding the affiliates in the top 50 markets from running more than three hours of network or off-network programming during the four-hour prime time period. Thus, the rule was viewed as a way to increase affiliate autonomy and reduce network dominance. The immediate effect was to ensure that not all of an affiliate's prime time programming came through the same network filter. The *Notice* asks commenters to provide evidence regarding the bargaining positions of affiliates *vis-a-vis* their networks. For example, during hours other than the PTAR access period, do affiliates in the top 50 markets carry programs other than network programs? To what extent does the market dynamic in the top 50 markets dictate performance in the less populated markets? Are the recent affiliation switches indicative of a change in the relative bargaining power of the networks and their affiliates, or are these switches due to other factors? To the extent that the behavior of affiliates might change in some way if PTAR were modified or repealed, how would that affect the programs ultimately available to viewers? The *Notice* solicits comment on these and other related issues.

7. Third, the rule has come to be viewed as a mechanism for strengthening independent stations, with the result of increasing the strength and number of the primary buyers of independently produced programming. The argument is that, with this increase, not only are the number of independent program producers increasing, but the opportunity for new networks to emerge and compete with the existing networks is enhanced (by the presence of a healthy pool of independent stations). Thus, by strengthening independent stations overall, the rule has been considered to further both diversity and competition goals. Moreover, the independent stations themselves produce some degree of original programming, which contributes to the overall levels of diverse programming available in the market. The *Notice* thus invites comment on whether, given the current level of program diversity, the competitive alteration that PTAR causes with respect to a segment of the market is warranted. Similarly, the *Notice* asks commenters to address the degree to which, from economic and public interest perspectives, PTAR leads to misallocated resources, limits viewers' programming choices, and alters the optimal prices paid. The *Notice* seeks comment on its analysis of this issue in general, and in particular raises questions such as: (1) whether regulatory measures designed to encourage the introduction into the broadcast industry of increased competition in the form of new networks remain necessary when the established networks and their affiliates are also competing against nonbroadcast video services; and (2) whether any inefficiencies of encouraging entry of new networks by placing limits on incumbents are outweighed by real benefits, and if so, what types and what number of inefficiencies and benefits.

8. In addition to seeking comment on the above-described ways in which PTAR alters the competitive opportunities in the relevant markets, the Commission framed certain overarching issues going to the public interest basis for PTAR, including, but not limited to, whether non-broadcast media should be considered in assessing the rule, whether PTAR is the appropriate mechanism to ensure diversity for those who do not avail themselves of technological alternatives to broadcast television, and whether other regulatory responses other than PTAR would be more effective or efficient to achieve the stated goals of the rule.

9. To the extent that the record to be developed might support retaining PTAR in whole or part, the Commission seeks public comment on the incidental elements of the rule—the definition of a "network" for purposes of the rule, and the various program categories that are exempted from application of PTAR. Moreover, although the policy examinations to be undertaken in this proceeding may make it unnecessary to address specific constitutional questions raised by the rule, if the rule is to be retained in some form, the Commission seeks comment on various constitutional implications of the rule and any proposed alternatives.

10. The Commission seeks comment on these issues, as well as specific economic analysis and supporting data favoring either retention, modification or repeal of the rule. If the Commission chooses to modify or eliminate the rule, we must then determine when to do so and whether to adopt transition measures. A modification to the rule might be appropriately enacted immediately after such a decision is made, or through a timetable that allows industry participants to adjust to the changing economic conditions that might result from modifications to PTAR. Elimination of the rule might be tied to technological developments or the timing might be tied to regulatory developments such as the scheduled expiration of the fyn/syn rules of some time thereafter. Similarly, a transition mechanism could be based on a variety of different considerations, focusing on defining the stages of that transition if one is adopted. For example, one possible transition would entail initial repeal of the off-network restriction followed by later repeal of the remainder of the rule. The *Notice* questions whether such a staggered repeal of the rule would further the public interest by reducing marketplace disruption or would delay the realization of benefits that could otherwise be realized from immediate form. In summary, should the record support elimination or modification of the rule, the Commission will require a record regarding the timing of any action and whether specific transition measures are necessary or appropriate.

11. Initial Regulatory Flexibility Analysis

Reason for the Action

This proceeding was initiated to review and update the provisions of PTAR.

Objective of the Action

The actions proposed in this *Notice* are intended to reexamine and perhaps modify or eliminate the prime time access rule, 47 C.F.R. § 73.658(k), in response to changes in the communications marketplace, and to better adjust to the needs of the public.

Reporting, Record Keeping, and Other Compliance Requirements Inherent in the Proposed Rule

None.

Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule

None.

Description of Potential Impact and Number of Small Entities Involved

Approximately 416 existing television broadcasters of all sizes may be affected by the proposals contained in this *Notice*.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives

The proposals contained in this *Notice* are meant to simplify and ease the regulatory burden currently placed on network affiliates in the top 50 markets.

12. As required by § 603 of the Regulatory Flexibility Act, the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals suggested in this *Notice of Proposed Rule Making.* Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice,* but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice,* including the IRFA, to the Chief Counsel for Advocacy of Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981)).

Ex Parte

13. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203 and 1.1206(a).

Comment Dates

14. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 6, 1995, and reply comments on or before February 6, 1995. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27425 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. 92–20; Notice 4]

Petition for Approval of Alternate Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of Final Denial.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) denies the petition submitted by the State of Florida for approval of alternate odometer disclosure requirements. Only one comment was submitted in response to NHTSA's preliminary determination that Florida's proposed procedures threaten the integrity of the current disclosure system. The agency reaffirms that determination, and Florida must conform its procedures to the odometer disclosure requirements of 49 CFR Part 580.

FOR FURTHER INFORMATION CONTACT: John Donaldson, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C., 20590 (202) 366–1834.

SUPPLEMENTARY INFORMATION:

Background

To address the problem of odometer fraud, 49 U.S.C. Chapter 327 (previously 15 U.S.C. 1981 *et seq.*) (the Act) provides that each person transferring ownership of a motor vehicle must disclose the mileage on the vehicle's title. The Act requires the States to conform their procedures to ensure that the titles they issue contain odometer disclosure statements. Section 32705(d) of the Act directs NHTSA to approve alternate methods of odometer disclosure submitted by a State, provided that those methods are consistent with the purposes of the disclosure required by the Act.

NHTSA's implementing regulation, 49 CFR Part 580, identifies specific elements to be included in the odometer disclosure statement (49 CFR 580.5 and 580.7). The elements of central importance to the instant petition are the name and current address of both the transferor and the transferee. The regulation also sets forth procedures a petitioning State must follow to seek approval of alternate requirements to those otherwise required of the State (49 CFR 580.11). In accordance with this latter provision, the State of Florida submitted a petition for approval of alternate disclosure requirements.

Basis for the Petition

Florida seeks approval for alternative procedures to those contained in 49 U.S.C. 32705(b) (previously 15 U.S.C. 1988(d)) and 49 CFR 580.5 (c)(3) and (c)(4). (The petition identifies paragraphs (c)(2) and (c)(3) of the regulation, but it is clear from its context that paragraphs (c)(3) and (c)(4) were intended.) These provisions require odometer disclosure statements to be made on a title produced by means of a secure printing process and to include the name and current address of the transferor and transferee.

Florida currently uses two motor vehicle title forms, copies of which were submitted with the petition. In all aspects of relevance here, the forms are identical. Both forms contain one block for transfer of title by the seller on the front and three blocks for dealer reassignment and one block for application for title on the back. Florida states that the transfer of title and the dealer reassignment blocks appear as prescribed by 49 CFR 580.5, except that they do not contain a space for the address of the transferor and transferee. Notwithstanding the absence of address spaces in these locations, Florida asserts that its titles comply with the Federal requirements in all cases except those involving reassignment by a licensed motor vehicle dealer.

Florida explains that State law (Florida Statutes, Chapter 319) precludes the assignment of a motor vehicle title by anyone other than the person in whose name the title was issued, unless the person is a dealer. Consequently, in a sale between non-dealers, Florida points out that the required addresses will be available because the transferor's address appears on the front of the title and the transferee's address will eventually appear in the block for "Application for Title by Purchaser." Citing NHTSA's determination (53 FR No. 151 at 29470, Aug. 5, 1988) that information located elsewhere on the title need not be repeated in the disclosure statement, Florida argues that its titles comply with

Federal requirements related to transfers between non-dealers.

The alternate procedures for which Florida seeks approval apply to transfers by or between licensed dealers. Florida acknowledges that its titles do not make accommodation for the address of a dealer. Instead, the dealer is required to include its license number in the reassignment block appearing on the back of the title, when effecting a subsequent transfer. According to Florida, the Department of Highway Safety and Motor Vehicles (DHS) maintains records of all licensed dealers in the State, indexed by both license number and name, from which current address information is freely available upon request. Florida asserts that this system is superior to the requirement of NHTSA's regulation, because the State records contain the latest available address information, and because consumers can be informed by the DHS of avenues of relief through the State's consumer complaint process and its $25,000 dealer license bond. Accordingly, Florida concludes that the odometer disclosure procedures it imposes on dealers are fully consistent with the purposes behind the Federal odometer disclosure requirements, and that its petition should therefore be granted.

Notice of Preliminary Determination

On August 29, 1994, NHTSA published a notice in the **Federal Register** (59 FR 44397) preliminarily denying Florida's petition. NHTSA determined that an odometer disclosure statement that does not include the addresses of transferors and transferees threatens the integrity of the current system, and that Florida's proposed alternative does not properly accommodate the purposes which these addresses serve.

NHTSA rejected the procedures Florida would impose on transactions in which at least one party is a dealer as inconsistent with the purposes of the Federal requirements. Noting that the DHS would be unable to provide the required address information from its records if an out-of-state dealer were involved in the chain of transfer on a Florida title, NHTSA determined that Florida's approach failed to accommodate interstate motor vehicle transfers. NHTSA further noted that it would be extremely difficult to ascertain the location of an out-of-state dealer without any identifying information beyond a license number from an unknown State.

NHTSA concluded that Florida's proposed procedures would hinder enforcement efforts, which rely on readily available address information for all transferors and transferees in order to trace the sales histories of motor vehicles. The agency also noted that title blocks lacking a common information element accepted by most States as the norm for compliance with odometer disclosure requirements are more likely to be questioned or rejected in interstate transactions, thereby hindering the flow of commerce in motor vehicles.

With respect to motor vehicle transfers in which no party is a dealer, NHTSA agreed that Florida's odometer disclosure procedures satisfy Federal odometer disclosure requirements. However, NHTSA recommended that the purchaser's address appear in the transfer block on the front of the title for improved clarity.

Comments

In response to the Notice of Preliminary Determination, The agency received only one comment, which was submitted by the California Department of Motor Vehicles after the close of the comment period. Despite its lateness, NHTSA has considered the comment.

According to California, national title standards developed by the American Association of Motor Vehicle Administrators and accepted by the States set forth requirements for title document size and contents. California asserts that these standards and State statutes often preclude the inclusion of additional information on the title document. Due to these title size limitations, California is concerned that mandating the address information might reduce the space available for dealer reassignment blocks and therefore lead to increased paperwork in title transfers.

As a preliminary matter, NHTSA would point out that neither State statutes nor association standards may act to preclude the disclosure of information required by Federal law. Moreover, California fails to acknowledge that all other States (except Florida) have properly accommodated the requirement for including address information in the odometer disclosure statement, and many of these States' titles include multiple dealer reassignment blocks. Hence, California's concern is not reflected in real world problems. California has only recently begun to conform its titling procedures with Federal odometer requirements, and should consult other States for guidance in this matter.

Final Determination

The agency is in possession of no information that would suggest that a change in the preliminary determination is appropriate. Accordingly, NHTSA reaffirms its preliminary determination and denies Florida's petition for approval of alternate odometer disclosure requirements. Florida must conform its procedures to the odometer disclosure requirements of 49 CFR Part 580. Additionally, the agency urges Florida to include a block for the purchaser's address on the front of the title, for improved clarity.

Issued on: November 2, 1994.

Philip R. Recht,

Chief Counsel.

[FR Doc. 94–27523 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

[Docket No. 941002–4302; I.D. 092794B]

RIN 0648–AG23

Stone Crab Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 5 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP). This rule would establish a temporary moratorium, ending not later than June 30, 1998, on the Federal registration of stone crab vessels by the Director, Southeast Region, NMFS (Regional Director), and would invalidate any Federal numbers and color codes issued by the Regional Director after July 1, 1994, for use on stone crab vessels and gear. In addition, NMFS proposes changes to correct and clarify the regulations, conform them to current standards, and enhance enforcement.

DATES: Written comments must be received on or before December 19, 1994.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 5, which includes a regulatory impact review and an environmental assessment, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486, FAX: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by regulations at 50 CFR part 654 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The stone crab fishery managed under the FMP is located entirely off the coast of Florida, with the majority of harvest from Florida's waters. Florida has actively managed the fishery since 1929. The FMP was implemented in 1979, principally to regulate the activities of shrimp vessels registered in states other than Florida to resolve gear conflicts with stone crab fishermen. Other FMP objectives included managing the stone crab resource for optimum yield, conserving the stocks while attaining full utilization, establishing an effective reporting system, and promoting uniformity of the regulations throughout the management area. The FMP, as amended addressed the gear conflicts and adopted Florida's rules for stone crab in the exclusive economic zone (EEZ).

The biological condition of the stone crab fishery is stable, with landings of claws averaging about 3 million lb (1.36 million kg) annually. During the early development of the fishery, annual landings increased as fishing effort increased; however, landings since 1985 have not increased while fishing effort has doubled. The fishery currently has more participants and stone crab traps than are necessary to harvest efficiently the optimum yield.

Florida is considering a moratorium on the issuance of State permits for the stone crab fishery while alternatives for a possible effort limitation or controlled access system are considered. The current regulations provide for the issuance by the Regional Director of Federal numbers and color codes for stone crab fishing in the EEZ when an applicant is unable to obtain a State permit. However, the Regional Director has not issued any Federal numbers/color codes under the current regulations. Amendment 5 would place a temporary moratorium ending not later than June 30, 1998, on the issuance by the Regional Director of Federal numbers and color codes for use on stone crab vessels and gear, and would invalidate any permits issued between July 1, 1994, and the effective date of the regulations implementing Amendment 5. This moratorium would end no later than June 30, 1998, and would discourage speculative entry into the fishery while potential effort or access controls are considered by the industry, Florida, and the Council.

NMFS published notification of the proposed moratorium on July 1, 1994 (59 FR 33947), which advised fishermen that, if Amendment 5 is approved and implemented, any Federal numbers/color codes issued between July 1, 1994, and the effective date of the implementing regulations would no longer be valid.

During the 4-year moratorium period, it is reasonably expected that the Council will propose further management measures that would revise the provisions for the issuance of Federal numbers/color codes. Accordingly, NMFS proposes to remove the current provisions regarding Federal issuance of numbers/color codes at this time rather than suspend their effectiveness for the 4-year period. If needed, any such provisions will be implemented by a subsequent rulemaking to be effective when the moratorium actually expires.

Additional Measures in Amendment 5

Amendment 5 proposes a procedure whereby the Florida Marine Fisheries Commission (FMFC) may request the Regional Director to implement in the EEZ by regulatory amendment, with the Council's review and concurrence, modification to certain gear and harvest limitations applicable to State waters that were proposed by the FMFC and approved by the Florida Governor and Cabinet. The regulatory amendment process requires publication of a proposed rule in the Federal Register, a public comment period, and, if the rule is approved, publication of a final rule in the Federal Register. The specific steps of the regulatory amendment procedure under the enhanced cooperative management system proposed in Amendment 5 are contained on pages 8–10 of the amendment.

Under Amendment 5, the Council FMFC, and NMFS would adopt a protocol that describes the roles and positions of the Federal and State governments in the management of the stone crab fishery. The provisions of the protocol would be as follows:

1. The Council and NMFS acknowledge that the fishery is a State fishery (which extends into the EEZ) in terms of current participants in the directed fishery, major nursery, fishing, and landing areas, and historical regulation; and it is a fishery requiring cooperative State/Federal efforts for effective management through an FMP.

2. The Council and NMFS acknowledge that the State is managing and will continue to manage the resource to protect and increase the long-term yields and prevent depletion of the stone crab stocks and that the State Administrative Procedure Act and rule implementation procedures, including final approval of the rules by Governor and Cabinet, provide ample and fair opportunity for all persons to participate in the rulemaking procedure.

3. The FMFC acknowledges that rules proposed for implementation under this amendment must be consistent with the management objectives of the FMP, the national standards, other provisions of the Magnuson Act, and other applicable Federal law. Federal rules will be implemented in accordance with regulatory amendment procedures.

4. The Council and NMFS agree that, for any of the rules defined within this amendment, the State may propose the rule directly to NMFS, concurrently informing the Council of the nature of the rule, and that NMFS will implement the rule within the EEZ, provided it is consistent under protocol number 3. If the Council informs NMFS of its concern that the rule may be inconsistent with the FMP and Federal law (protocol number 3), NMFS will not implement the rule until the Council, FMFC, and NMFS, or their representatives, meet and resolve the issue.

5. The State will have the responsibility for collecting and developing the information upon which to base the fishing rules, with assistance by NMFS, as needed, and will cooperatively share the responsibility for enforcement with the Federal agencies.

6. The FMFC will provide NMFS and the Council written explanations of its decisions related to each of the rules (including a statement of the problem that the rulemaking addresses, how the rule will solve the problem, and how interested parties were involved in the rulemaking), summaries of public comments, biological, economic and social analyses of the impacts of the proposed rule and alternatives, and such other information that is relevant

7. The rules will apply to the management area (the EEZ off the west coast of Florida and off the south side of the Florida Keys).

8. NMFS agrees that its staff will prepare the proposed (and final) Federal rule. The Council agrees that its staff,

with assistance by the staffs of FMFC and NMFS, will prepare the environmental assessment, regulatory impact review, and/or other documents required in support of the rule.

The Council believes that using a regulatory amendment procedure under the protocol would provide more flexible, responsive, and cost-effective management of the stone crab fishery. The following rules or regulatory changes could be implemented under the protocol: Limiting the number of traps that may be fished by each vessel; the construction characteristics of traps; gear and vessel identification requirements; gear that may be used or prohibited in a directed fishery; bycatch levels in non-directed fisheries; seasons; soak/removal periods and requirements for traps; use, possession and handling of stone crabs aboard vessels; and minimum legal sizes.

Concomitant with the proposed regulatory amendment procedure, Amendment 5 proposes to add to the objectives of the FMP the following: "Provide for a more flexible management system that minimizes regulatory delay to assure more effective, cooperative state and federal management of the fishery."

These additional measures in Amendment 5 do not require implementing regulations.

Additional background and rationale for the measures discussed above are contained in Amendment 5, the availability of which was announced in the **Federal Register** on September 30, 1994 (59 FR 49908).

Additional Measures Proposed by NMFS

In a significant number of sections, the stone crab regulations do not conform to current standards applicable to other federally managed fisheries in the Gulf of Mexico and off the southern Atlantic states. Accordingly, NMFS proposes to revise the entire part 654. The substantive changes proposed by NMFS are discussed below.

The purpose and scope section, § 654.1, would be revised to clarify the geographical scope of the regulations.

In § 654.2, unused definitions would be removed and the address of the Director, Southeast Region, NMFS, would be corrected.

The vessel and gear identification requirements, currently in § 654.4, are essentially identical to Florida's requirements. Since all required identification markings would be issued by Florida, separate Federal vessel and gear identification requirements would no longer be necessary. Accordingly, this rule would refer to pertinent rules of Florida for such requirements.

In § 654.7, the prohibitions would be restated and prohibitions would be added: (1) On using fishing gear in a manner to obstruct fishing or damage vessels and gear; (2) on making a false statement to an authorized officer; and (3) regarding interference with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

For uniformity and clarity, NMFS proposes to restate the seasonal trawl closures in the area off the southwestern coast of Florida and in the shrimp/stone crab separation zones in terms of "trawling." Currently the regulations at § 654.23 state these closures in terms of "trawl gear" and "fish(ing) for shrimp." For the southwestern Florida closure, the change in terminology is not substantive. For the shrimp/stone crab separation zones, the change would ease a restriction, in that fishing for shrimp by traps would not be prohibited in the zones/times in which fishing for shrimp is currently prohibited. In terms of gear separation, which is the purpose of the shrimp/stone crab separation zones, fixed gear and trawling would continue to be separated. In addition, the description of the area of the southwestern Florida seasonal trawl closure, and its depiction currently in figure 1, would be clarified to describe and show only the area that is in the EEZ.

The current regulations at § 654.23(b)(2) prohibit intentional/willful interference with fishing or obstruction or damage of a fishing vessel or fishing gear. The placement of this prohibition in the paragraph dealing with the shrimp/stone crab separation zones creates an inference that it applies only in such zones. However, the rules that originally implemented the prohibition stated that it applied "in the FCZ" (49 FR 30713, August 1, 1984). The former FCZ (fisheries conservation zone) is now the EEZ. Because such interference, obstruction, or damage is reprehensible wherever it occurs, NMFS proposes to clarify that these acts are prohibited throughout the management area. The inclusion of the phrase "with intent to" and the word "willfully" in the current language regarding these acts significantly reduces their effectiveness—proof of intent or willfulness is difficult. To enhance enforceability, NMFS proposes to remove "with intent to" and "willfully" and substitute "knowingly" in each case. Proof of a violation would then hinge on the placement, or use of articles or gear that cause obstruction or damage, if such placement or use was other than by accident.

The procedures for creation or modification of the shrimp/stone crab separation zones to prevent gear conflicts, currently at § 654.24 would be removed. These procedures apply to Florida regulatory agencies, the Council, and NMFS and are contained in the FMP. However, they are not regulatory in nature; that is, they do not control the behavior of fishermen. Therefore, their inclusion in the regulations is not necessary.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a council within 15 days of receipt of an amendment and regulations. At this time, NMFS has not determined that Amendment 5 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed moratorium on Federal registration of stone crab vessels operating in the EEZ would not: (1) Reduce the number of current participants in the fishery, harvest levels, or annual gross revenues of participants; (2) affect production or compliance costs of participants; (3) require capital investment to comply with the rule; or (4) require a current participant to cease business. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 654

Fisheries, Fishing.

Dated: October 28, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries.

For the reasons set out in the preamble, 50 CFR part 654 is proposed to be revised to read as follows:

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

Subpart A—General Measures

Subpart B—Management Measures

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Measures

§ 654.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, prepared by the Gulf of Mexico Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of stone crab and restricts the trawl fishery in the management area.

(c) "EEZ" in this part 654 refers to the EEZ in the management area, unless the context clearly indicates otherwise.

§ 654.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Management area means the EEZ off the west coast of Florida and off the south side of the Florida Keys.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 813–570–5301; or a designee.

Stone crab means *Menippe mercenaria*, *M. adina*, or the hybrid, *M. adina X M. mercenaria*, or a part thereof.

§ 654.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) and (c) of this section.

(b) The regulations in this part are intended to be compatible with, and do not supersede, similar regulations in effect for the Everglades National Park (36 CFR 7.45).

(c) The regulations in this part are intended to be compatible with similar regulations and statutes in effect in Florida's waters.

§ 654.4 Permits and fees. [Reserved]

§ 654.5 Recordkeeping and reporting. [Reserved]

§ 654.6 Vessel and gear identification.

(a) An owner or operator of a vessel that is used to harvest stone crabs by traps in the management area must comply with the vessel and gear identification requirements applicable to the harvesting of stone crabs by traps in Florida's waters, as specified in Rule 16N–8.001 and Rule 46–13.002(2) (e) and (f), Florida Administrative Code. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle, West, Suite 106, Tallahassee, FL 32301; telephone 904–487–0554. Copies may be inspected at the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, or the Office of the Federal Register, 800 North Capitol Street, NW., room 700, Washington, DC 20002.

(b) A stone crab trap or buoy in the EEZ that is not in compliance with the gear identification requirements specified in paragraph (a) above is illegal. Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties. A stone crab trap will be presumed to be the property of the most recently documented owner.

§ 654.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to display and maintain vessel and gear identification, as required by § 654.6(a).

(b) Possess a stone crab in the management area during the period specified in § 654.20(a).

(c) Possess a stone crab trap in the management area during the period specified in § 654.20(c).

(d) Remove from a stone crab in or from the management area, or possess in the management area, a claw that is less than the minimum size limit specified in § 654.21(a).

(e) Fail to return immediately to the water unharmed an egg-bearing stone crab, or strip eggs from or otherwise molest an egg-bearing stone crab; as specified in § 654.21(b).

(f) Hold a stone crab in or from the management area aboard a vessel other than as specified in § 654.21(c).

(g) Use or possess in the management area a stone crab trap that does not have a biodegradable panel, as specified in § 654.22(a).

(h) Pull or tend a stone crab trap in the management area other than during daylight hours, as specified in § 654.22(b).

(i) Willfully tend, open, pull, or otherwise molest another fisherman's trap, buoy, or line in the management area, as specified in § 654.22(c).

(j) Trawl in a closed area or during a closed season, as specified in §§ 654.23 or 654.24, or as may be implemented under § 654.25(b).

(k) Place a stone crab trap in a closed area or during a closed season, as specified in § 654.24, or as may be implemented under § 654.25(b).

(l) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in § 654.25(a).

(m) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of stone crab.

(n) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 654.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 654.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 654.20 Seasons.

(a) *Closed season.* No person may possess a stone crab in the management area from 12:01 a.m., local time, May 16, through 12:00 midnight, local time, October 14, each year. Holding a stone crab in a trap in the water during a soak period or during a removal period (see paragraph (b) of this section), or during any extension thereto, is not deemed possession, provided that, if the trap is removed from the water during such period, such crab is returned immediately to the water with its claws unharvested.

(b) *Placement of traps.* (1) Prior to the fishing season, the period of October 5

through October 14 is established as a trap soak period. A stone crab trap may be placed in the management area not earlier than 1 hour before sunrise on October 5.

(2) After the fishing season, the period of May 16 through May 20 is established as a trap removal period. A stone crab trap must be removed from the management area not later than 1 hour after sunset on May 20, unless an extension to the removal period is granted by Florida in accordance with Rule 46–13.002(2)(b), Florida Administrative Code. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle, West, Suite 106, Tallahassee, FL 32301; telephone 904–487–0554. Copies may be inspected at the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, or the Office of the Federal Register, 800 North Capitol Street, NW., Room 700, Washington, DC 20002. The extension authorization must be carried aboard the fishing vessel. The operator of a fishing vessel must present the authorization for inspection upon request of an authorized officer.

(c) *Possession of stone crab traps.* A stone crab trap may not be possessed in the management area from the end of the trap removal period, or an extension thereto, to the beginning of the trap soak period, as specified in paragraph (b) of this section. A stone crab trap, float, or rope in the management area during this period will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such trap, float, or rope remains subject to appropriate civil penalties.

§ 654.21 Harvest limitations.

(a) *Claw size.* No person may remove from a stone crab in or from the management area, or possess in the management area, a claw with a propodus measuring less than 2.75 inches (7.0 cm), measured in a straight line from the elbow to the tip of the lower immovable finger. The propodus is the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body when the entire appendage is extended. (See Appendix A, Figure 1.)

(b) *Egg-bearing stone crabs.* An egg-bearing stone crab in or from the management area must be returned immediately to the water unharmed—without removal of a claw. An egg-bearing stone crab may not be stripped of its eggs or otherwise molested.

(c) *Holding stone crabs.* A live stone crab in or from the management area may be held aboard a vessel until such time as a legal-sized claw is removed, provided it is held in a container that is shaded from direct sunlight and it is wet with sea water as necessary to keep it in a damp condition. Containers holding stone crabs must be stacked in a manner that does not compress the crabs. A stone crab body from which a legal-sized claw has been removed must be returned to the sea before the vessel reaches shore or a port or dock.

§ 654.22 Gear restrictions.

(a) *Biodegradable panels.* A stone crab trap used or possessed in the management area must have a panel constructed of wood or cotton and located on a side of the trap at least two slats above the bottom, or on the top of the trap, which, when removed, will leave an opening in the trap measuring at least 2.5 inches by 5 inches (6.35 cm by 12.7 cm).

(b) *Daylight hours.* A stone crab trap in the management area may be pulled or tended during daylight hours only, that is, from 1 hour before sunrise to 1 hour after sunset.

(c) *Gear belonging to others.* No fisherman may willfully tend, open, pull, or otherwise molest another fisherman's trap, buoy, or line in the management area without the prior written consent of that fisherman.

§ 654.23 Southwest Florida seasonal trawl closure.

From January 1 to 1 hour after sunset (local time) May 20, each year, the area described in this section is closed to trawling, including trawling for live bait. The area is that part of the management area shoreward of a line connecting the following points (see Appendix A, Figure 2):

Point	North latitude	West longitude
B[1]	26°16′	81°58.5′
C	26°00′	82°04′
D	25°09′	81°47.6′
E	24°54.5′	81°50.5′
M[1]	24°49.3′	81°46.4′

[1] On the seaward limit of Florida's waters.

§ 654.24 Shrimp/stone crab separation zones.

Five zones are established in the management area and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. The zones are as shown in Appendix A, Figure 3. Although Zone II is entirely within Florida's waters, it is included in this paragraph and Appendix A, Figure 3, for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46–38.001, Florida Administrative Code. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle, West, Suite 106, Tallahassee, FL 32301; telephone 904–487–0554. Copies may be inspected at the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, or the Office of the Federal Register, 800 North Capitol Street, NW., Room 700, Washington, DC 20002. Geographical coordinates of the points referred to in this paragraph and shown in Appendix A, Figure 3, are as follows (loran readings are unofficial and are included only for the convenience of fishermen):

Point	North latitude	West longitude	Loran Chain 7980			
			W	X	Y	Z
A	28°59′30″	82°45′36″	14416.5	31409.4	45259.1	62895.3
B	28°59′30″	83°00′10″	14396.0	31386.3	45376.8	63000.0
C	28°26′01″	82°59′47″	14301.5	31205.9	45103.2	63000.0
D	28°26′01″	82°56′54″	14307.0	31212.2	45080.0	62981.3
E	28°41′39″	82°55′25″	14353.7	31300.2	45193.9	62970.0
F	28°41′39″	82°56′09″	14352.4	31298.6	45199.4	62975.0
G	28°48′56″	82°56′19″	14372.6	31337.2	45260.0	62975.0
H	28°53′51″	82°51′19″	14393.9	31371.8	45260.0	62938.7

Point	North latitude	West longitude	Loran Chain 7980			
			W	X	Y	Z
I	28°54'43"	82°44'52"	(1)	(1)	(1)	(1)
J	28°51'09"	82°44'00"	(2)	(2)	(2)	(2)
K	28°50'59"	82°54'16"	14381.6	31351.8	45260.0	62960.0
L	28°41'39"	82°53'56"	14356.2	31303.0	45181.7	62960.0
M	28°41'39"	82°38'46"	(3)	(3)	(3)	(3)
N	28°41'39"	82°53'12"	14357.4	31304.4	45176.0	62955.0
O	28°30'51"	82°55'11"	14323.7	31242.4	45104.9	62970.0
P	28°40'00"	82°53'08"	14352.9	31295.7	45161.8	62955.0
Q	28°40'00"	82°47'58"	14361.3	31305.4	45120.0	62920.0
R	28°35'14"	82°47'47"	14348.6	31280.6	45080.0	62920.0
S	28°30'51"	82°52'55"	14327.7	31247 0	45086.6	62955.0
T	28°27'46"	82°55'09"	14315.2	31225.8	45080.0	62970.0
U	28°30'51"	82°52'09"	14329.1	31248.6	45080.0	62949.9

[1] Crystal River Entrance Light 1A.
[2] Long Pt. (southwest tip).
[3] Shoreline.

(a) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D, T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ during the period October 5 through May 20, each year.

(b) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K, L, and M, plus the shoreline between points J and M.

(c) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ during the period October 5 through May 20, each year.

(d) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(1) It is unlawful to place a stone crab trap in that part of Zone IV that is in the EEZ during the periods October 5 through December 1, and April 2 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone IV that is in the EEZ during the period December 2 through April 1, each year.

(e) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(1) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ during the periods October 5 through November 30, and March 16 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone V that it is in the EEZ during the period December 1 through March 15, each year.

(f) A stone crab trap, float, or rope in the management area during a period not authorized by this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such trap, float, or rope remains subject to appropriate civil penalties. A stone crab trap will be presumed to be the property of the most recently documented owner.

§ 654.25 Prevention of gear conflicts.

(a) No person may knowingly place in the management area any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and restrictions of the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, the Regional Director may modify or establish separation zones for shrimp trawling and the use of fixed gear as may be necessary and appropriate to prevent gear conflicts. Necessary prohibitions or restrictions will be published in the **Federal Register**.

§ 654.26 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations in this part.

Appendix A to Part 654—Figures

Figure 1—Stone Crab Claw
Figure 2—Southwest Florida Seasonal Trawl Closure
Figure 3—Shrimp/Stone Crab Separation Zones

BILLING CODE 3510-22-P

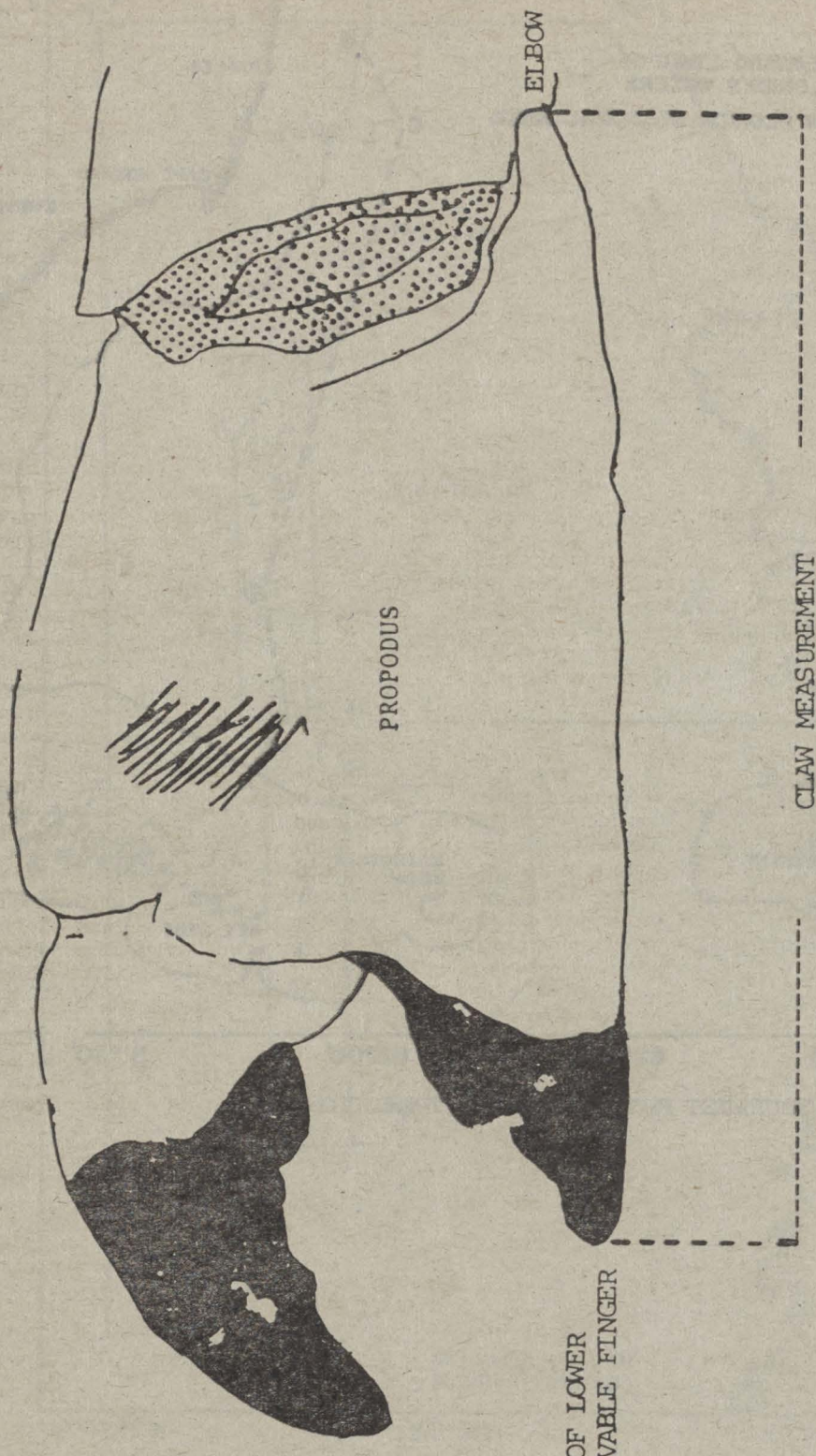


FIGURE 1. STONE CRAB CLAW

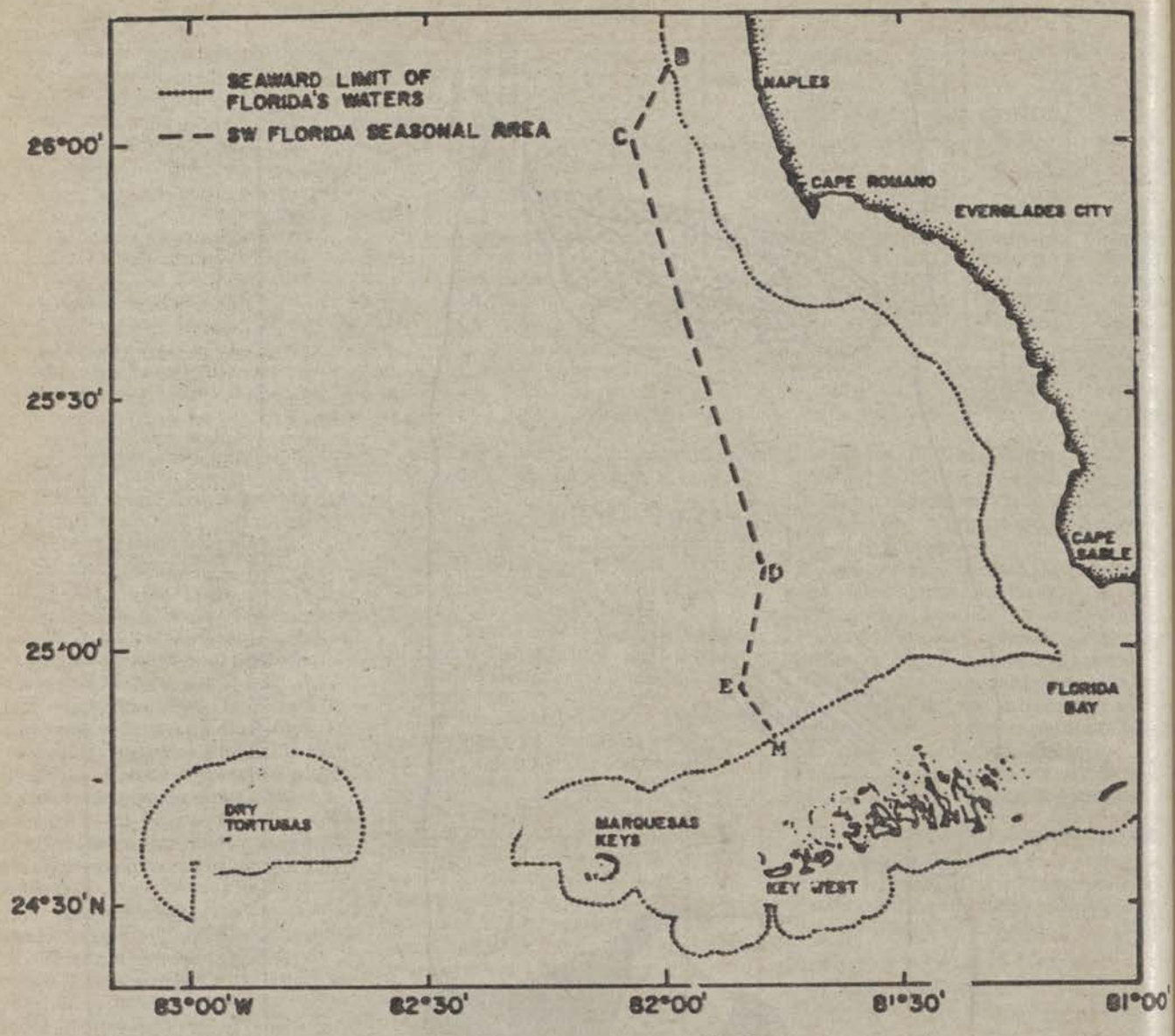


FIGURE 2. SOUTHWEST FLORIDA SEASONAL TRAWL CLOSURE

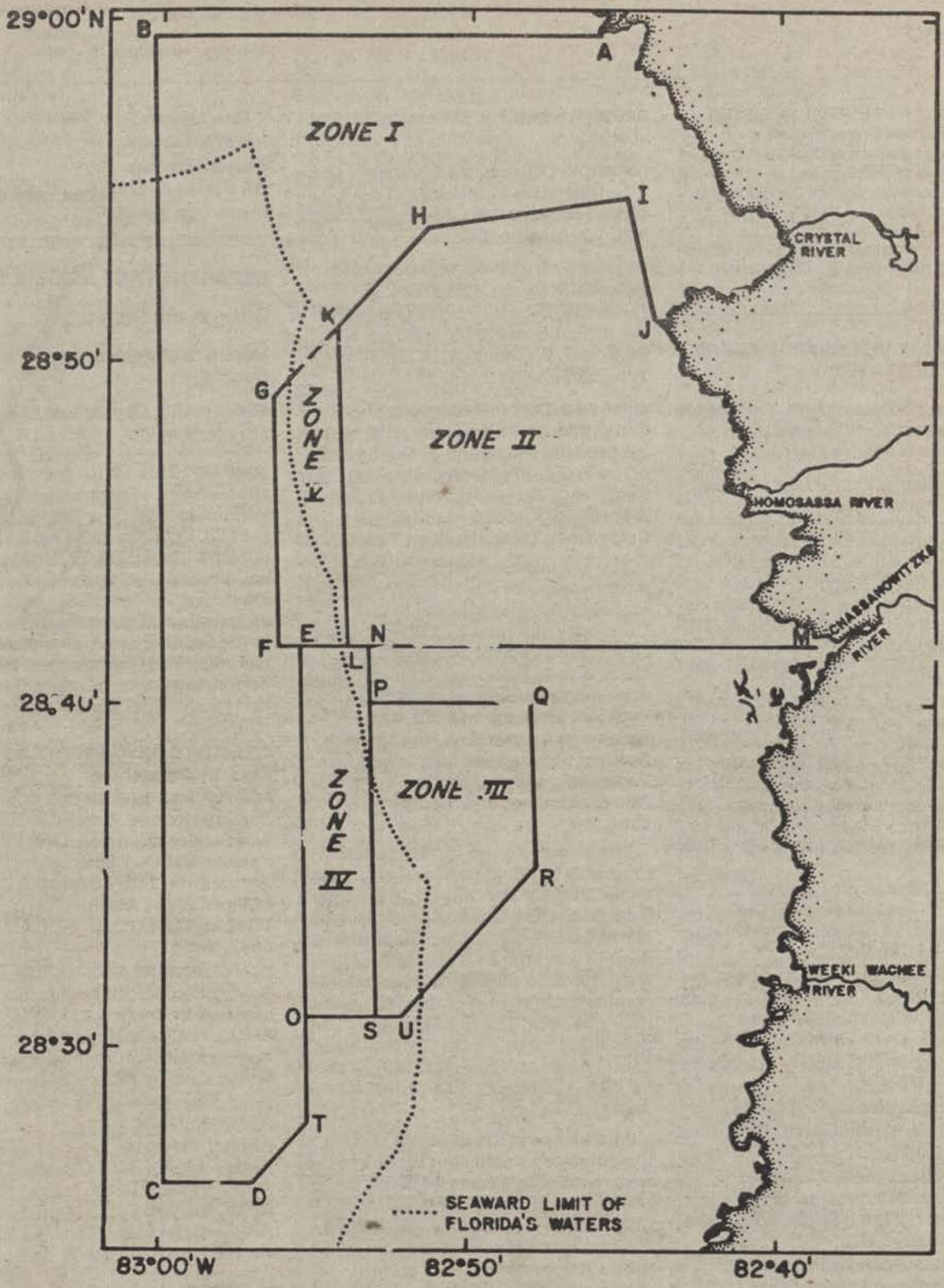


FIGURE 3. SHRIMP/STONE CRAB SEPARATION ZONES

[FR Doc. 94-27371 Filed 11-2-94; 4:28 pm]
BILLING CODE 3510-22-C

Notices

Federal Register
Vol. 59, No. 214
Monday, November 7, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking, Committee on Regulation, and Committee on Governmental Processes

ACTION: Notice of Public Meetings and Rescheduling of Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of three committees of the Administrative Conference of the United States: Committee on Rulemaking, Committee on Regulation, and Committee on Governmental Processes. The meeting of the Committee on Governmental Processes is a rescheduling of a meeting previously announced for December 2, 1994.

AGENCY: Committee on Rulemaking

DATES: Monday, December 5, 1994, from 2–4 p.m.

LOCATION: Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Regulation.

DATES: Friday, November 18, 1994, from 10 am to 12:30 p.m.

LOCATION: Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Governmental Processes.

DATES: Wednesday, November 30, 1994 at 3:30 p.m.

LOCATION: Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Rulemaking will meet to continue its discussion of Exemption 8 of the Freedom of Information Act. The Conference's consultant for this project is Professor Roy Schotland of the Georgetown University Law Center.

The Committee on Regulation will meet to consider a new draft report by Professor Douglas Michael of the University of Kentucky College of Law on self-enforcement as a regulatory alternative to direct enforcement. This draft follows an earlier study by Professor Michael, which led to Recommendation 94–1, The Use of Audited Self-Regulation as a Regulatory Technique, adopted by the Administrative Conference in June 1994.

The Committee on Governmental Processes meeting, previously announced for December 2, 1994, has been rescheduled. It will take place on November 30, 1994. The committee will meet to continue its discussion of the restrictions on the ability of government employees to engage in uncompensated public service. The Conference's consultant for this project is Professor Lisa G. Lerman, Columbus School of Law, the Catholic University of America.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of each committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: November 2, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–27529 Filed 11–4–94; 8:45 am]
BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture (USDA). The USDA PRBs provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture, regarding final performance ratings, performance awards, pay adjustments, and Presidential Rank Awards for SES members.

EFFECTIVE DATE: Upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Executive Resources and Services Division, Office of Personnel, U.S. Department of Agriculture, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250, (202) 720–6047.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by Section 4314(c)(4) of Title 5, U.S.C. The following membership list represents a standing register, from which specific PRBs will be constituted.

Ackerman, Kenneth D.
Acord, Bobby R.
Ahalt, J. Dawson
Alexander, Michael L.
Allen, Richard Dean
Allen, Richard F.
Alspach, David B.
Andreuccetti, Eugene E.
Army, Thomas J.
Arnold, Richard W.
Arnoldi, Joan M.
Ashworth, Warren R.
Atienza, Mary E.
Babcock, Stephen L.
Backiel, Adela
Bagley, Edward B.

Bange, Gerald A.
Barnes, Donald K.
Barrett Jr., Fred S.
Bartuska, Ann M.
Bauer III, Henry A.
Bay, Donald M.
Beasley, Joseph L.
Beauchamp, Craig L.
Berg, Joel S.
Berry, Robert M.
Betschart, Antoinette A.
Beyer, Wally
Blackburn, Wilbert H.
Blackley, Ronald H.
Booth, Jerry J.
Bosecker, Raymond Ronald
Bosworth, Dale N.
Bottum, John S.
Braley, George A.
Breeze, Roger
Brewster Walker, Sandra J.
Bristow II, William M.
Brooks, Howard J.
Buchanan, Robert L.
Buisch, William W.
Buntrock, Grant B.
Burke, Thomas G.
Burns, Denver P.
Burse Sr., Luther
Burt, John P.
Callstrom, Raymond C.
Carey, Ann E.
Carlson, William D.
Carnevale, Richard A.
Carpenter, Barry L.
Carter, Mary E.
Cartwright Jr., Charles W.
Cherry, John P.
Clark, Cynthia Z.F.
Clayton, Kenneth C.
Cohen, Kenneth E.
Collins, Keith J.
Comanor, Joan M.
Connelly, Kathleen H.
Conrad, Virgil L.
Conway, Roger K.
Conway, Thomas V.
Coulter, Kyle Jane
Crain, W. Bruce
David, Irwin T.
Dawson, Deborah A.
Deavers, Kenneth L.
Dewhurst, Stephen B.
Donald, James R.
Dornbusch Jr., August J.
Duesterhaus, Richard L.
Duncan, Charles N.
Duncan III, John P.
Dunkle, Richard L.
Dunn, Michael V.
Ebbitt, James R.
Elder, Alfred S.
Elias, Thomas S.
Ellis, Joanne H.
Estill, Elizabeth
Evans, Gary R.
Evans, Reba P.
Fawbush, Wayne H.
Fenton, Robert
Finney Jr., Essex E.
Fishman, Michael E.
Fitzgerald, Oleta G.
Fitzpatrick Jr., Martin F.
Flieger, Neal H.
Foxworthy, Darold D.
Franco, Robert
Franks Jr., William Jesse
Gardner Jr., William Earl
Geasler, Mitchell Ray
Gelburd, Diane E.
Gerloff, Eldean D.
Giles, Jane L.
Gillam, Bertha C.
Gilliland, James S.
Gillum, Charles R.
Glavin, Margaret Agnes
Golden, John
Golodner, Adam M.
Gonter, Robert W.
Greene, Frank C.
Greenshields, Bruce L.
Hadlock, Earl C.
Hagy III, William F.
Hall, David C.
Hall, John W.
Hamilton, Thomas E.
Harcharik, David A.
Hardy Jr., Leonard
Harrington Jr., Rube
Harris, Sharron L.
Haas, Ellen A.
Hatamiya, Lon S.
Hatcher, Charles F.
Havlik, William J.
Hayes, Paula F.
Herbert, Thomas R.
Hefferan, Colien J.
Henneberry, Thomas J.
Hessel, David L.
Hicks, Vicki J.
Hill, Ronald W.
Hobbs, Alma C.
Hobbs, Ira L.
Holbrook, David M.
Holman, Pred Dwight
Horn, Floyd P.
Hornsby Jr., Andrew P.
Houser, Norman D.
Hudnall Jr., William J.
Husnik, Donald F.
Jackson, Ruthie F.
Jakub, Lawrence M.
Janik, Philip J.
Jennings, Vivan M.
Jensen, Patricia A.
Johnsen, Peter B.
Johnson, Allan S.
Johnson, Judith K.
Johnson, Paul Wesley
Johnson, Phyllis E.
Jolly, David F.
Jordan, John P.
Joslin, Robert C.
Kaiser Jr., Harold F.
Kaplan, Dennis L.
Keeffe, Mary Ann
Keeney, Robert C.
Keith, Roderick
Kelly, James Michael
Kelly, Michael W.
Kennedy, Eileen T.
King, Lonnie J.
King, R. Alan
King Jr., Edgar G.
Kling, Lou Anne
Knipling, Edward B.
Kronenberger Jr., Donald R.
Krugman, Stanley L.
Larson, Paul F.
Laster, Danny B.
Laverty Jr., Robert L.
Lavin, Mary Jo
Lee, Benjamin Glen
Lee, Warren M.
Leo, Joseph J.
Leonhardt, Barbara A.
Levinson, Sharon
Lewis, David N.
Lewis, Sherman L.
Lewis Jr., Robert
Lilja, Janice Grassmuck
Long, Richard D.
Lowe, John E.
Luchsinger, Donald W.
Ludwig, William E.
Lugo, Ariel E.
Lyons, James R.
Luken, Bonnie L.
Mackie, Philip L.
Majkowski, Hollace L.
Maloney, Kathryn P.
Manning, Amanda Dew
Margheim, Gary A.
Marita, Floyd J.
Marten, Gordon C.
Martin, Christopher J.
Martinez, Wilda H.
Massaro, Linda P.
McCleese, William L.
McCutcheon, John W.
McDougle, Janice H.
McKee, Richard M.
Medley, Terry L.
Mengeling, William L.
Miller, Charles R.
Mills, Thomas J.
Mina, Mark T.
Miranowski, John A.
Montoya, David F.
Montrey III, Henry M.
Moon, Harley W.
Moos, Eugene
Moreland, Donald E.
Mosley, Everett L.
Murrell, Kenneth D.
Nash, Bobby J.
Nelson, Robert D.
Nervig, Robert M.
Newsome, Conrad Merlain
Nies, Arthur H.
Norcross, Marvin A.
Novotny, Donald J.
Nuri, K.R.
O Brien, Patrick Michael
Oberlander, Herbert
Ohler, Barry A.
Okay, John L.

Oltjen, Robert R.
Oneil, Barbara T.
Oneth, Harry W.
Onstad, Charles A.
Osgood, Barbara T.
Papendick, Robert I.
Payton, Floy E.
Peer, Wilbur T.
Perry, James P.
Peters, Robert
Peterson, Kenneth R.
Philpot, Charles W.
Plowman, Ronald D.
Power, James F.
Powers, Joseph A.
Powers, Judy M.
Prucha, John C.
Purcell, Robert L.
Pytel, Christine
Radzikowski, John S.
Rains, Michael T.
Rawls, Charles R.
Read, Hershel R.
Rector, David C.
Reed, Anne F.T.
Reed, Craig A.
Reed, Pearlie S.
Reginato, Robert J.
Reimers, Mark A.
Reynolds, Gray F.
Reynolds, James R.
Rhoades, James D.
Riekert, Edward G.
Riley Jr., William J.
Robertson, George S.
Robinson, Bobby H.
Rominger, Richard E.
Rothbart, Herbert L.
Roussopoulos, Peter J.
Rust, David A.
Salwasser, Harold James
Satterfield, Steven E.
Schipper Jr., Arthur L.
Schnoor, Kim E.
Schroeder, James W.
Schroeter, Richard B.
Schumacher Jr., August
Schwalbe, Charles P.
Schwindaman, Dale F.
Segal, Judith A.
Sesco, Jerry A.
Seymour, Carol M.
Shackelford, Parks D.
Shands, Henry L.
Shaw, Robert R.
Shearer, P. Scott
Shipman, David R.
Simmons, Robert M.
Skeen, David
Slabach, Frederick G.
Small, Gordon H.
Smith, Dallas R.
Smith, Peter Francis
Smythe, Richard V.
Sommers, William T.
Space, James C.
Spence, Joseph
Sprague, G. Lynn
Springfield, James E.
Squellati, Clarence P.
St. John, Judith B.
Stauber, Karl N.
Steele, W. Scott
Stewart, James L.
Stewart, Ronald E.
Stockton Jr., Blaine D.
Stolfa, Patricia F.
Strating, Alfred
Stuber, Charles W.
Tatum, James E.
Taylor, Michael R.
Tharrington, Ronnie O.
Thiermann, Alejandro B.
Thomas, Irving W.
Thomas, Jack W.
Thompson, Clyde
Tidd, Peter M.
Torgerson, Randall E.
Townsend Jr., Wardell C.
Unger, David G.
Vacca, Francis J.
Vail, Kenneth H.
Valsing, D. Charles
Van Schilfgaarde, Jan
Viadero, Roger C.
Vogel, Frederic A.
Vogel, Ronald J.
Von Garlem, Thomas A.
Vonk, Jeffrey Ronald
Wachs, Lawrence
Wagner, Lynnett M.
Walker, Larry A.
Walsh, Thomas M.
Watkins, Calvin W.
Watkins, Shirley R.
Webb, Aileen
Weber, Barbara C.
Weber, Bruce R.
White, Evelyn M.
Whiteman, Glenn D.
Withmore, Charles
Wilcox, Sterling J.
Wilder, Manly S.
Wilds Jr., Jetie B.
Williams, Anthony A.
Williams, John W.
Williamson, Robert L.
Wilson, Edward M.
Wilson Jr., Larry
Witt, Timothy Blaine
Woods, Monroe
Wright, Lloyd E.
Zellers, Phillip
Dayton Watkins

Dated: October 31, 1994.

Richard Rominger,

Deputy Secretary.

[FR Doc. 94–27515 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–96–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 941005–4305]

Proposed Redefinition of the BEA Economic Areas

AGENCY: Bureau of Economic Analysis (BEA), Commerce.

ACTION: Notice of proposed changes and request for comments.

SUMMARY: In a previous notice in the Federal Register (56 FR 13049, March 9, 1993), BEA announced its "Intent to Revise the Boundaries of the BEA Economic Areas" and presented the procedures used to define the current economic areas. This notice presents for public comment a proposed redefinition of the economic areas, which reduces their number from 183 to 174. Any additional changes to the proposed economic areas will be based largely on the comments received. The resulting new economic areas, along with a summary of the comments received, will be presented in a later notice. At that time, the new economic areas will supersede the current 183 BEA economic areas.

DATES: Persons who wish to comment on the proposed redefinition of the BEA economic areas should do so in writing no later than December 22, 1994.

ADDRESSES: Written comments should be submitted to Kenneth Johnson, U.S. Department of Commerce, Bureau of Economic Analysis BE–61, Regional Economic Analysis Division, Washington, DC 20230; fax (202) 606–5321. Comments also may be sent by electronic mail on the Internet to Kenneth Johnson at ken.johnson@opm.gov.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, (202) 606–9219; fax (202) 606–5321.

SUPPLEMENTARY INFORMATION:

Part I: Background

Under authority granted in 15 U.S.C. 175 *et seq.*, BEA develops and presents geographically detailed economic data and facilitates regional economic analysis. As part of this obligation, BEA defined the 183 current economic areas in 1977. The economic areas cover the entire nation. The redefinition now underway is necessary to maintain the analytical usefulness of the areas in light of the substantial changes in area commuting patterns shown by the 1990 Census of Population.

Each economic area consists of one or more economic nodes—metropolitan areas or similar areas that serve as centers of economic activity—and the surrounding counties that are economically related to the nodes. (Metropolitan areas include metropolitan statistical areas (MSA's), primary metropolitan statistical areas (PMSA's), and New England county metropolitan areas (NECMA's).) Commuting patterns are the main factor used in determining the economic

relationships among counties. The economic-area definition procedure requires that, as far as possible, each area include both the place-of-work and the place-of-residence of its labor force.

For some analyses, government agencies and businesses need data that are more geographically detailed than economic-area data. Government agencies often use relatively small areas for design of their program regulations or implementation of their licensing programs. Businesses need such detail for determining plant locations and for defining sales and marketing territories. BEA is responding to these needs as part of the economic-area redefinition by first defining a set of 348 "Component Economic Areas" (CEA's) and then using these as building blocks for redefining the larger economic areas.

Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. Of the nodes, 90 percent are metropolitan, and 10 percent are nonmetropolitan. Each metropolitan area is the node of a different CEA; with minor exceptions, the nonmetropolitan nodes are nonmetropolitan counties where newspapers widely read in these areas are published.

In general, the procedure to redefine the economic areas is similar to that used to define the current economic areas. First, nodes are identified. Then, non-nodal counties are assigned to nodes, mainly based on commuting patterns and on newspaper circulation. A procedural difference is that now node identification and the assignment to nodes of non-nodal counties are done in a more systematic way and at a more geographically detailed level. The procedure results in the definition of 348 CEA's; these are then aggregated to form 174 BEA economic areas.

Part II: Detailed Procedures

1. Identification of Nodes

With the exception of New England MSA's, each metropolitan area in the nation is identified as a node of a CEA. Metropolitan areas consist of 240 MSA's, 59 PMSA's, and 11 NECMA's. Thus, metropolitan areas serve as nodes for 310 of the 348 CEA's.

Each of 38 nonmetropolitan counties is identified as a node of a CEA in parts of the nation remote from metropolitan areas. Identification of most of the nonmetropolitan nodes follows a four-part process. First, analysis of commuting patterns for the nation's 2,305 nonmetropolitan counties shows that 1,112 of these are not closely related to metropolitan areas. Second, analysis of newspaper publication data for the 1,112 counties shows that 130 of these are locations of newspapers whose circulations are recorded by the Audit Bureau of Circulations, an organization whose membership includes approximately 98% of U.S. newspaper circulation. Third, further analysis of newspaper circulation and of population for the 130 counties shows that 68 of these have populations of more than 50,000, or are locations of newspapers widely read in at least five counties, or both. Fourth, a preliminary test attempting to use all 68 of these counties as CEA nodes shows that only 35 of these qualify as nodes of CEA's that contain at least five counties. These 35 counties are identified as nonmetropolitan nodes.

The CEA associated with each of the 35 nonmetropolitan nodal counties selected by the four-step process is named for the city in which the county's major newspaper is published. The cities are: Flagstaff, AZ; Jonesboro, AR; Idaho Falls, ID; Twin Falls, ID; Quincy, IL; Manhattan, KS; Paducah, KY; Bowling Green, KY; Salisbury, MD; Traverse City, MI; Marquette, MI; Mankato, MN; Worthington, MN; Hattiesburg, MS (identified by the Office of Management and Budget as a new MSA as of July 1, 1994); Meridian, MS; Tupelo, MS; Greenville, MS; Missoula, MT; Butte, MT; Grand Island, NE; North Platte, NE; Norfolk, NE; Scottsbluff, NE; Lebanon, NH; Hobbs, NM; Farmington, NM; Minot, ND; Pendleton, OR; Aberdeen SD; Watertown, SD; Cookeville, TN; Lufkin, TX; Staunton, VA; Clarksburg, WV; and Bluefield, WV.

Three CEA's, each of which consists of a group of closely related nonmetropolitan counties in very remote parts of the country, do not have newspaper-based nodes. These CEA's are named by their locations and include a 7-county group defined by the Alaskan panhandle, a 13-county group in northern Michigan, and an 11-county group in western Oklahoma. The county containing the largest city in each of these areas is the node for the CEA.

2. Assignment of Non-Nodal Counties to Nodes

Of the nation's 3,141 counties, 836 counties are in metropolitan nodes and 38 counties are nonmetropolitan nodes. Each of the remaining 2,267 non-nodal counties is analyzed to determine the node to which it is most closely related. The initial assignment of about 75 percent of the non-nodal counties is based on journey-to-work data from the 1990 Census of Population. These counties are assigned to nodes based on their largest county-to-county commuting flows. In many instances, the association between a county and a particular node is based, not on direct commuting ties to a nodal county, but on commuting ties to a non-nodal county that is tied to the node. The initial assignment of most of the other non-nodal counties is based on newspaper circulation data. These counties are assigned to nodes based on the locations of the regional newspapers that are most widely read in these counties. In all cases, contiguity of a non-nodal county to a node or to another non-nodal county already assigned to the node is required before the initial assignment is made. The initial assignment of a few of the non-nodal counties requires special procedures. These usually apply in counties with very small populations or unusual contiguity problems.

The initial assignments of non-nodal counties are based on the strongest county-to-county relationships; these need not reflect the strongest county-to-CEA relationships. Following the initial definitions of the CEA's, 373 counties are reassigned to ensure that, to the extent possible, each county is assigned to the CEA with which it has the strongest commuting ties. (Six counties do not meet this objective because they are not contiguous with the CEA's to which they have the most commuting.)

3. Aggregation to Economic Areas

The 348 CEA's are used as building blocks for the proposed 174 BEA economic areas. CEA's are aggregated so that (1) as far as possible, the labor force of each resulting economic area works and resides in that area and (2) each resulting economic area is large enough economically to be part of BEA's local-area economic projections program. In general, aggregation to economic areas has two parts. In the first part, the 59 CEA's with PMSA's as nodes are combined into 17 economic areas corresponding to the 17 consolidated metropolitan statistical areas (CMSA's) that comprise the PMSA's. (A CMSA is an MSA that has more than 1 million residents and is subdivided into two or more PMSA's.) In the second part of the aggregation, each of 141 CEA's that do not meet size and commuting criteria is combined with the CEA to which it has the most commuting.

Part III: Map and List of the Proposed 174 BEA Economic Areas

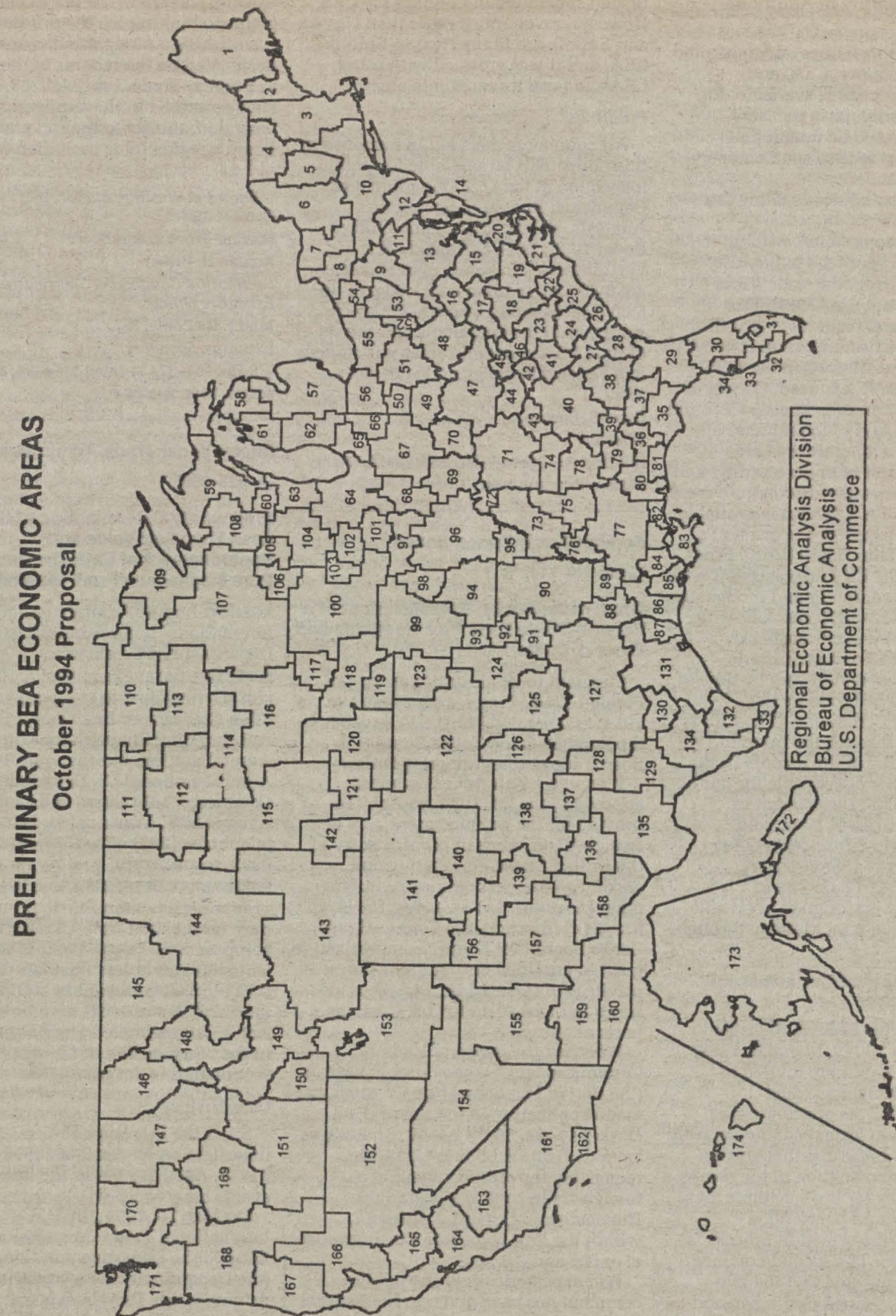
Codes from 1 to 174 are assigned to the proposed economic areas in approximate geographic order, beginning with 1 in northern Maine, continuing south to Florida, then north to the Great Lakes, and continuing in a serpentine pattern to the West Coast.

With the exception of three special-node areas (Alaskan Panhandle, Western Oklahoma, and Northern Michigan), each economic area is named for the node of its largest CEA. The following list provides economic-area codes and names. Economic-area boundaries and codes are shown on the map following the list.

EA Code	Name
001	Bangor, ME
002	Portland, ME
003	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH
004	Burlington, VT
005	Albany-Schenectady-Troy, NY
006	Syracuse, NY
007	Rochester, NY
008	Buffalo-Niagara Falls, NY
009	State College, PA
010	@New York-No. New Jersey-Long Island, NY-NJ-CT-PA (CMSA–70)
011	Harrisburg-Lebanon-Carlisle, PA
012	@Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD (CMSA–77)
013	@Washington-Baltimore, DC-MD-VA-WV (CMSA–97)
014	*Salisbury, MD
015	Richmond-Petersburg, VA
016	*Staunton, VA
017	Roanoke, VA
018	Greensboro-Winston-Salem-High Point, NC
019	Raleigh-Durham-Chapel Hill, NC
020	Norfolk-Virginia Beach-Newport News, VA-NC
021	Greenville, NC
022	Fayetteville, NC
023	Charlotte-Gastonia-Rock Hill, NC-SC
024	Columbia, SC
025	Wilmington, NC
026	Charleston-North Charleston, SC
027	Augusta-Aiken, GA-SC
028	Savannah, GA
029	Jacksonville, FL
030	Orlando, FL
031	@Miami-Fort Lauderdale, FL (CMSA–56)
032	Fort Myers-Cape Coral, FL
033	Sarasota-Bradenton, FL
034	Tampa-St. Petersburg-Clearwater, FL
035	Tallahassee, FL
036	Dothan, AL
037	Albany, GA
038	Macon, GA
039	Columbus, GA-AL
040	Atlanta, GA
041	Greenville-Spartanburg-Anderson, SC
042	Asheville, NC
043	Chattanooga, TN-GA
044	Knoxville, TN
045	Johnson City-Kingsport-Bristol, TN-VA
046	Hickory-Morganton, NC
047	Lexington, KY
048	Charleston, WV
049	@Cincinnati-Hamilton, OH-KY-IN (CMSA–21)
050	Dayton-Springfield, OH
051	Columbus, OH
052	Wheeling, WV-OH
053	Pittsburgh, PA
054	Erie, PA
055	@Cleveland-Akron, OH (CMSA–28)
056	Toledo, OH
057	@Detroit-Ann Arbor-Flint, MI (CMSA–35)
058	*Northern Michigan, MI
059	Green Bay, WI
060	Appleton-Oshkosh-Neenah, WI
061	*Traverse City, MI
062	Grand Rapids-Muskegon-Holland, MI
063	@Milwaukee-Racine, WI (CMSA–63)
064	@Chicago-Gary-Kenosha, IL-IN-WI (CMSA–14)
065	Elkhart-Goshen, IN
066	Fort Wayne, IN
067	Indianapolis, IN
068	Champaign-Urbana, IL
069	Evansville-Henderson, IN-KY
070	Louisville, KY-IN
071	Nashville, TN
072	*Paducah, KY
073	Memphis, TN-AR-MS
074	Huntsville, AL
075	*Tupelo, MS
076	*Greenville, MS
077	Jackson, MS
078	Birmingham, AL
079	Montgomery, AL
080	Mobile, AL
081	Pensacola, FL
082	Biloxi-Gulfport-Pascagoula, MS
083	New Orleans, LA
084	Baton Rouge, LA
085	Lafayette, LA
086	Lake Charles, LA
087	Beaumont-Port Arthur, TX
088	Shreveport-Bossier City, LA
089	Monroe, LA
090	Little Rock-North Little Rock, AR
091	Fort Smith, AR-OK
092	Fayetteville-Springdale-Rogers, AR
093	Joplin, MO
094	Springfield, MO
095	*Jonesboro, AR
096	St. Louis, MO-IL
097	Springfield, IL
098	Columbia, MO
099	Kansas City, MO-KS
100	Des Moines, IA
101	Peoria-Pekin, IL
102	Davenport-Moline-Rock Island, IA-IL
103	Cedar Rapids, IA
104	Madison, WI
105	La Crosse, WI-MN
106	Rochester, MN
107	Minneapolis-St. Paul, MN-WI
108	Wausau, WI
109	Duluth-Superior, MN-WI
110	Grand Forks, ND-MN
111	*Minot, ND
112	Bismarck, ND
113	Fargo-Moorhead, ND-MN
114	*Aberdeen, SD
115	Rapid City, SD
116	Sioux Falls, SD
117	Sioux City, IA-NE
118	Omaha, NE-IA
119	Lincoln, NE
120	*Grand Island, NE
121	*North Platte, NE
122	Wichita, KS
123	Topeka, KS
124	Tulsa, OK
125	Oklahoma City, OK
126	*Western Oklahoma, OK
127	@Dallas-Fort Worth, TX (CMSA–31)
128	Abilene, TX
129	San Angelo, TX
130	Austin-San Marcos, TX
131	@Houston-Galveston-Brazoria, TX (CMSA–42)
132	Corpus Christi, TX
133	McAllen-Edinburg-Mission, TX
134	San Antonio, TX
135	Odessa-Midland, TX
136	*Hobbs, NM
137	Lubbock, TX
138	Amarillo, TX
139	Santa Fe, NM
140	Pueblo, CO
141	@Denver-Boulder-Greeley, CO (CMSA–34)
142	*Scottsbluff, NE
143	Casper, WY
144	Billings, MT
145	Great Falls, MT
146	*Missoula, MT
147	Spokane, WA
148	*Butte, MT
149	*Idaho Falls, ID
150	*Twin Falls, ID
151	Boise City, ID
152	Reno, NV
153	Salt Lake City-Ogden, UT
154	Las Vegas, NV-AZ
155	*Flagstaff, AZ
156	*Farmington, NM
157	Albuquerque, NM
158	El Paso, TX
159	Phoenix-Mesa, AZ
160	Tucson, AZ
161	@Los Angeles-Riverside-Orange County, CA (CMSA–49)
162	San Diego, CA
163	Fresno, CA
164	@San Francisco-Oakland-San Jose, CA (CMSA–84)
165	@Sacramento-Yolo, CA (CMSA–82)
166	Redding, CA
167	Eugene-Springfield, OR
168	@Portland-Salem, OR-WA (CMSA–79)
169	*Pendleton, OR
170	Richland-Kennewick-Pasco, WA
171	@Seattle-Tacoma-Bremerton, WA (CMSA–91)
172	*Alaskan Panhandle, AK
173	Anchorage, AK
174	Honolulu, HI

The "*" denotes a nonmetropolitan-node name, the "@" denotes a CMSA name; all other names are MSA's or NECMA's.

BILLING CODE 3510–06–M



BILLING CODE 3510-06-C

Part IV: Availability of Additional Information

The text for this Notice and a detailed data file with county, CEA, and economic-area codes is available, for downloading only, from the New England Electronic Economic Data Center. Connect to the Data Center's Internet node at neeedc.umesbs.maine.edu using the anonymous FTP (username="anonymous" with no password) and "get" the binary file EADATA.EXE from the node's root directory. (Do not use GOPHER or MOSAIC Internet technologies at this node.) This file decompresses into self-explanatory text files when the DOS command EADATA is used. Counts of the number of counties in each CEA and economic area and of the number of CEA's in each economic area are included to assist in understanding and evaluating the proposed economic areas. The file EADATA.EXE also is available through the Commerce Department's Economic Bulletin Board (EBB). First-time users of the EBB may access it with their personal computer and modem by dialing (202) 482–3870 and following instructions. The user's cost is an annual fee of $45 and per-minute connect charges, which vary by time of day; users will be billed by the Department of Commerce. (The EBB is also available through the Internet.) A hard-copy listing of the records in the detailed data file is available for public review at the U.S. Department of Commerce, Bureau of Economic Analysis, Public Information Office, Room 1026, 1441 L Street, NW., Washington, DC. The hours of availability are 8:30 a.m. to noon and 1:00 p.m. to 5:00 p.m. Monday through Friday.

Part V: Summary of Comments and Responses

In the previous **Federal Register** Notice (56 FR, 13049, March 9, 1993) interested persons were invited to provide comments regarding methodology for the economic area definitions. Two formal comments were received. One suggested that greater clarity in the explanation of the means by which nodes for the economic areas are selected would be useful; a description of the selection process is included above. The second comment specifically requested that the two-county region defined by Nassau and Suffolk counties in New York be treated as separate from the New York MSA in the redefinition procedures. Nassau-Suffolk is a separate PMSA in the larger CMSA surrounding New York, so it is treated separately in defining the CEA's. However, no counties other than Nassau and Suffolk are in the Nassau-Suffolk CEA, and it was grouped with other CEA's to form its economic area.

Public Review Procedure

All comments received in response to this notice will be available for public inspection at the U.S. Department of Commerce, Bureau of Economic Analysis, Public Information Office, Room 1026, 1441 L Street, NW., Washington, DC. Hours of availability are 8:30 a.m. to noon and 1:00 p.m. to 5:00 p.m. Monday through Friday. A summary of the comments and the set of final BEA economic areas will appear in a **Federal Register** notice in early 1995.

Carol S. Carson,

Director.

[FR Doc. 94–27471 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–06–M

Foreign-Trade Zones Board

[Order No. 714]

Grant of Authority; Establishment of a Foreign-Trade Zone Port Hueneme and Oxnard, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board of Harbor Commissioners, Oxnard Harbor District (the Port of Hueneme) (the Grantee), has made application to the Board (FTZ Docket 41–93, 58 FR 44490, 8/23/93, as amended, 58 FR 65329, 12/14/93), requesting the establishment of a foreign-trade zone at sites in Port Hueneme and Oxnard, California, within the Port Hueneme Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 205, at the sites described in the application, as amended, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of October 1994.

Foreign-Trade Zones Board.

Ronald H. Brown,

Secretary of Commerce, Chairman and Executive Officer.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–27434 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–823–806]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Pure Magnesium From Ukraine

AGENCY: Import Administration, International trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3773 or (202) 482–0922, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of pure magnesium from Ukraine are being, or are likely to be, sold in the Untied States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on April 20, 1994, (59 FR 21748, April 26, 1994), the following events have occurred.

On May 16, 1994, the U.S. International Trade Commission (ITC) notified the Department of Commerce (the Department) of its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of pure magnesium from Ulkraine. The ITC also determined

in the companion investigation of alloy magnesium from Ukraine that there is not a likelihood that a U.S. domestic industry is materially injured, or threatened with material injury, by reason of imports of alloy magnesium from Ukraine, thereby terminating that investigation.

On June 13, 1994, we sent the antidumping questionnaire to the Ukrainian Embassy and the two Ukrainian manufacturers of pure magnesium, Concern Chlorvinyl and Zaporozhye Titanium and Magnesium Plant. (The antidumping questionnaire was divided into three sections: section A requesting general information on each company; section C requesting information on, and a listing of, U.S. sales made during the period of investigation ("POI"); and, section D requesting information on the production process, including specific amounts of each input used in manufacturing pure magnesium.) We requested the Embassy's assistance in forwarding the questionnaire to all exporters and producers of pure magnesium from Ukraine and submitting complete questionnaire responses on their behalf.

On August 8, 1994, the Department postponed its preliminary determination until October 27, 1994 (59 FR 42200, August 17, 1994).

On August 10, 1994, the Department provided interested parties with the opportunity to submit published, publicly-available information for consideration in valuing factor inputs. Petitioners submitted information on September 7, 1994; respondents submitted information on September 22, 1994.

Respondent Selection

In addition to sending the Ukrainian Embassy the questionnaire, the Department independently attempted to identify other possible exporters of Ukrainian pure magnesium to the United States during the POI based on information obtained from petitioners, and through examination of PIERS data and other sources of information. Our efforts consisted of issuing an August 8, 1994, survey requesting information on exports to the United States of the subject merchandise; issuing the antidumping questionnaires (limited to Sections A and C) to trading companies operating in various European countries (on August 19, September 7, and September 13, 1994); and a September 15, 1994, follow-up letter to unresponsive questionnaire recipients.

We sent either the survey, the questionnaire, or both documents to 56 companies, with the following results.

- Two companies, Gerald Metals and MG Metals, provided responses to Sections A and C of the questionnaire.
- Twenty-five other companies, meanwhile, indicated that they did not export the subject merchandise to the United States during the POI. The companies that did not export were Intreid; Kemokomplex; Nobel Trading; Raba Company; Alamet; Compagnie de Mines et Metals; Expromptorg; Fred Lonner & Co., Inc.; Metal Exchange Corporation; Minmeta S.A., Minmetals Canada, Inc.; Scandinavian Steel AB; Stena Metall Atervinning AB; Sinex AG; Maks Trade Kft.; Sassoon Metals and Chemicals; Seleb; Weko Food Trading; IMEX Consulting Sprl; W&O Bergmann; Steinweg Handelsveem; A. Hartrodt; C. Steinweg Handelsveem B.V.; J. Oosterom & Zoom; and Siegfried Kahn AG.
- Seven companies indicated that they were related to companies who had provided information as to whether or not they had made U.S. sales.
- Eighteen companies provided either no response or an inadequate response. The Department received no response from the following 16 contacted companies: Derek Raphael & Co. Ltd.; Marco Trading; Wogen Group Ltd.; Alex; Mages; and 11 other companies whose names cannot be disclosed in this notice because their identities has been deemed business proprietary information. We have designated these 11 companies as companies "A" through "K" in the "Suspension of Liquidation" section of this notice, below. We will, however, identify them to the Customs Service for enforcement of this determination. Additionally, F&S and Alusuisse-Lonza indicated that they made POI sales to the United States, but provided inadequate responses to our requests for information.
- Finally, surveys or questionnaires sent to four companies were returned as undeliverable.

From July to October 1994, the Department received responses to sections A and D from Concern Chlorvinyl, which indicated that it had made no sales of the subject merchandise directly to the United States during the POI. Zaporozhye responded to section A but did not reply to subsequent deficiency letters.

During September and October 1994, the Department also requested clarifications of the information submitted by Concern Chlorvinyl, Gerald Metals, MG Metals, and Alusuisse-Lonza. Alusuisse-Lonza did not respond to the supplemental request. Because of the deadlines established for responses to these supplemental requests, certain information submitted by Gerald Metals and MG Metals was not considered for this preliminary determination.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on October 24, 1994, Gerald Metals, a reseller accounting for a significant proportion of the merchandise in this proceeding, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination in the **Federal Register**. Concern Chlorvinyl, a producer accounting for a significant proportion of merchandise in this proceeding, made a similar request on October 26, 1994. Therefore, we are postponing the final determination until the 135th day after the publication of this notice in the **Federal Register**.

Scope of Investigation

The product covered by this investigation is pure primary magnesium, regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Pure primary magnesium encompasses all products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium), as well as products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium). Products that have the aforementioned primary magnesium content, but that do not conform to ASTM specifications or other industry or customer-specific specifications, are included in the scope of this investigation.

Pure primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium.

Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2 mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1 mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are currently classifiable under subheadings 8104.11.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Nonmarket Economy Status

Ukraine has been treated as a nonmarket economy ("NME") country in all past antidumping proceedings (*see, e.g., Final Determination of Sales at Less Than Fair Value: Uranium from Ukraine* (58 FR 36640, July 8, 1993)). No information has been provided in this proceeding that would lead us to overturn this designation. Therefore, in accordance with section 771(18)(c) of the Act, we have treated Ukraine as an NME for purposes of this investigation.

Period of Investigation

The POI is October 1, 1993, through March 31, 1994.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales by Gerald Metals and MG Metals of pure magnesium from Ukraine to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

B. Non-Participating Respondents

All companies to which a questionnaire was issued are considered mandatory respondents in this proceeding. We consider those mandatory respondents that did not respond to the questionnaire to be uncooperative respondents and have based the less-than-fair-value margin for those companies on the best information available ("BIA"). We consider the following companies to be uncooperative respondents: Alusuisse-Lonza; Derek Raphael & Co. Ltd.; Marco Trading; Wogen Group Ltd.; Alex; Mages; F&S; and the 11 companies whose names cannot be disclosed because their identities are deemed business proprietary information. Accordingly, we have based these companies' LTFV margin on an uncooperative BIA rate.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents which did not cooperate in an investigation. As outlined in the *Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium*, 58 FR 37083 (July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. Here, since these companies failed to respond to our questionnaire, we are deeming them uncooperative and are assigning them a BIA margin of 53.99 percent. This margin represents the highest margin in the petition, as recalculated by the Department at the time of the initiation to account for errors in arithmetic and/or methodology.

C. All Other Companies

We are basing the LTFV margins for all other companies, including those companies which reported that they did not sell the subject merchandise to the United States during the POI, on a simple average of the rates calculated for the mandatory respondents, including rates based on BIA but excluding zero and *de minimis* margins, if any.

United States Price

We based USP on purchase price sales, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation into the United States and because exporter's sales price methodology was not indicated by other circumstances.

For those exporters that responded to the Department's questionnaire, we calculated purchase price based on packed, CIF or FOB foreign-port prices to unrelated purchasers in the United States. In addition, for CIF prices, we made the following deductions (where appropriate): for MG Metals, we deducted foreign brokerage, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance and U.S. brokerage and repacking cost; for Gerald Metals, we deducted foreign brokerage, ocean freight, U.S. Duty, U.S. inland freight, U.S. insurance and U.S. brokerage.

From each exporter's U.S. price, we calculated and then deducted foreign inland freight between the factory and the reported intermediate destination. We based our calculation on the per-ton foreign inland freight amount reported in the petition as best information available because the exporters failed to report information on this area in their questionnaire responses.

Foreign Market Value

A. Surrogate Country Selection

In accordance with section 773(c)(4) of the Act, we must, to the extent possible, value the factors of production in one or more market economy countries that (1) are at a level of economic development comparable to that of the non-market economy country, and (2) are significant producers of comparable merchandise. There are no countries economically comparable to Ukraine that are significant producers of magnesium. Accordingly, we considered as potential surrogates countries that are economically comparable that produce comparable merchandise. In these investigations, we have determined that aluminum should be considered comparable merchandise. Although the material inputs used to produce magnesium and aluminum are different, according to both U.S. Bureau of Mines and Department of Commerce experts, aluminum is comparable to magnesium in that both (1) are light metals in terms of molecular weight; (2) are electricity-intensive products; (3) are produced using an electrolytic process, and (4)

share some common end uses (*e.g.*, dye casting).

We have determined that Indonesia and Egypt are both economically comparable to Ukraine (*see* October 21, 1994, Memorandum from the Office of Policy to the File.) In addition, both countries are significant producers of aluminum. Because we were able to obtain more information from Indonesia than from Egypt, we have used Indonesia as our primary surrogate. However, we have resorted to Egypt for certain surrogate values where values in Indonesia were either unavailable or out of date. We have obtained and relied upon published, publicly available information, wherever possible.

B. Factors of Production

In accordance with section 773(c)(1), we used factors of production as the fair value benchmark for the U.S. price of sales of Concern Chlorvinyl-produced merchandise by Gerald Metals and MG Metals. In the case of U.S. sales of Zaporozhye-produced merchandise for which we did not receive factors of production data, a BIA margin was assigned using the higher of (a) the highest adjusted alleged margin cited in our initiation notice or (b) the highest margin calculated for a sale of Concern Chlorvinyl-produced merchandise. The factors used to produce pure magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, *see* our calculation memorandum.) We then added amounts for factor overhead, general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

To value the raw materials, we used publicly available information from Indonesia in the *UN Trade Commodity Statistics* ("*UN Trade Statistics*") for January through December 1993 and the 1992 *Indonesia Foreign Trade Statistics*. No adjustment for inflation was necessary since the 1993 *UN Trade Statistics* for Indonesia reported data for a portion of the POI. For values taken from *Indonesian Foreign Trade Statistics*, we made appropriate adjustments to account for inflation. For one energy input, we used data from the 1992 *UN Trade Statistics* for Egypt since the unit value from the 1993 *UN Trade Statistics* for Indonesia was based on an extremely small quantity and appeared to be aberrational. The 1992 Egyptian value for this input was inflated to the POI. For one raw material, we used information from the petition as best available information because we were unable to find a value in either Indonesia or Egypt.

To adjust material input values to account for source-to-factory freight, we used Indonesia freight rates from a 1991 cable from the U.S. Embassy in Jakarta. (*See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China* (57 FR 21058, May 18, 1992).

To value labor amounts for production and packing, we used labor data for Egypt, as reported in the International Labor Office's *1993 Yearbook of Labor Statistics* because the labor value available for Egypt was more up-to-date (1987) than was the labor value available for Indonesia (1986). We adjusted labor wage rates to account for inflation using world price indices for Egypt as reported in the International Monetary Funds' *International Financial Statistics (IFS)*.

To value heavy oil and diesel fuel, we used 1993 data for Indonesia from the Energy Information Administration's *International Energy Annual*. Although we are unable to adjust these values for taxes included in the published prices, they are the only data found for heavy oil and diesel fuel in Indonesia.

To value electricity, we used information for Indonesia from the Asian Development Bank's 1993 *Electric Utilities Data Book for Asian and Pacific Region*.

Because we were unable to find surrogate values for factory overhead from either Indonesia or Egypt, we used factory overhead rates from the petition.

We used the statutory minima of ten percent for selling, general and administrative expenses and eight percent for profit because no surrogate country information reflected percentages for those amounts that were above the statutory minima.

To value packing materials, we used data from the 1993 *UN Trade Statistics* for Indonesia. Because information for certain packing materials was incompletely reported, we were unable to calculate a unit factor value for these materials. Therefore, we included data from the petition to account for the cost of these packing materials.

Verification

As provided in section 776(b) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all imports of the subject merchandise that are entered, or withdrawn from warehouse, from consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. We will also inform Customs of the identities of those companies, identified below by a code letter, whose names we are unable to disclose. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Gerald Metals	52.21
MG Metals	36.05
Alusuisse Lonza	53.99
Derek Raphael & Co., Ltd.	53.99
Marco Trading	53.99
Wogen Group Ltd.	53.99
Alex	53.99
Mages	53.99
F&S	53.99
Company A	53.99
Company B	53.99
Company C	53.99
Company D	53.99
Company E	53.99
Company F	53.99
Company G	53.99
Company H	53.99
Company I	53.99
Company J	53.99
Company K	53.99
All Others	53.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 10, 1995, and rebuttal briefs, no later than February 17, 1995. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing

will be held on February 21, 1995, at 10:00 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by the 135th day after the date of publication of the affirmative preliminary determination in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: October 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-27435 Filed 11-4-94, 8:45 am]

BILLING CODE 3510-PS-P

[A-570-832 and A-570-833]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Pure Magnesium and Alloy Magnesium From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-1769, respectively.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of pure magnesium and alloy magnesium from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on April 20, 1994, (59 FR 21748, April 26, 1994), the following events have occurred.

On May 16, 1994, the U.S. International Trade Commission (ITC) notified the Department of Commerce ("the Department") of its preliminary determination that there is a reasonable indication that industries in the United States are materially injured by reason of imports of pure and alloy magnesium from the PRC that are alleged to be sold at less than fair value.

On June 13, 1994, the Department sent the antidumping questionnaire to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the China Chamber of Commerce of Metals, Minerals and Chemical Products, and seven PRC companies. (The antidumping questionnaire was divided into three sections: section A requesting general information on each company; section C requesting information on, and a listing of, U.S. sales made during the period of investigation ("POI"); and, section D requesting information on the production process, including specific amounts of each input used in manufacturing pure or alloy magnesium). We requested MOFTEC's assistance in forwarding the questionnaire to all exporters and producers of pure magnesium and alloy magnesium and submitting complete questionnaire responses on their behalf.

On August 8, 1994, the Department postponed its preliminary determinations in these antidumping duty investigations until October 27, 1994 (59 FR 42200, August 17, 1994).

On August 10, 1994, the Department provided interested parties with the opportunity to submit published, publicly-available information for the Department to consider when valuing the factor inputs. Petitioners and respondents submitted information on September 7, 1994.

In August and September 1994, we received responses to the questionnaire from Min He Magnesium Smelter (Min He), a producer and exporter of the subject merchandise.

On September 1, 1994, the Government of the PRC advised us that Min He was the only exporter of the subject merchandise during the period of investigation (October 1, 1993, through March 31, 1994). As Min He's Section A response indicated that it made no sales of alloy magnesium during this period, on September 2, 1994, we requested all PRC exporters, through counsel, to provide information concerning sales of all magnesium for the 12 months prior to the six-month period of investigation (POI) in order to reconcile the small number of reported sales with the much larger number of magnesium entries from the PRC reported by U.S. Customs. The PRC exporters replied to this request on September 9, 1994, identifying several sales of pure magnesium and alloy magnesium between April and September 1993. These sales were made by Xiamen Xing Xia Company Ltd. (Xing Xia) and Xiamen Jinda International Trade Associated Corp. (Jinda). Accordingly, on September 16, 1994, the Department expanded the POI to encompass the twelve-month period April 1, 1993, through March 31, 1994, and requested supplemental questionnaire responses for that period.

On October 5, 1994, counsel for the PRC companies advised us that the information in its September 9, 1994, letter was in error and that all additional magnesium sales were made prior to the twelve-month POI. The exporters noted in the letter that their sales of alloy magnesium were pursuant to sales contracts for pure magnesium, but were classified as alloy magnesium by U.S. Customs upon their entry into the United States. On October 13, 1994, we again expanded the POI for alloy magnesium to a nineteen-month period of September 1, 1992, to March 31, 1994, in order to cover the most recent sales of magnesium entered into the United States as alloy magnesium. On the same date, we advised the PRC companies to provide questionnaire responses for alloy magnesium based on this POI. During October 1994, we received a supplemental questionnaire response from Min He, and a questionnaire response from Xing Xia, as well as a statement from Jinda that it did not make any sales during the POI.

Postponement of Final Determinations

Pursuant to section 735(a)(2)(A) of the Act, on October 19, 1994, the PRC exporters which account for all of the exports of the subject merchandise in each investigation requested that, in the event of affirmative preliminary determinations in these proceedings, the Department postpone the final determinations to 135 days after the date of publication of the affirmative preliminary determinations. Therefore, we are postponing the final determinations until the 135th day after the publication of this notice in the **Federal Register**.

Scope of Investigations

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Pure primary magnesium encompasses all products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium), as well as products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium). Products that have the aforementioned primary magnesium content, but that do not conform to ASTM specifications or other industry or customer-specific specifications, are included in the scope of this investigation.

Excluded from the scope of this investigation are primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The product subject to this investigation is currently classifiable under subheadings 8104.11.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

This investigation covers alloy primary magnesium products which contain 50% or greater, but less than 99.8%, primary magnesium, by weight. Products with the aforementioned primary magnesium content that do not conform to ASTM specifications or other industry or customer-specific specifications are included in the scope of this investigation. In addition to primary magnesium, "alloy" magnesium generally contains one or more of the following items in amounts less than the primary magnesium itself: (1) Other elements deliberately added to the primary magnesium; (2) magnesium scrap or secondary magnesium; (3) oxidized magnesium; and (4) other elements present as impurities.

Alloy primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are currently classifiable under HTSUS subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The product subject to this investigation is currently classifiable under subheadings 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation is April 1, 1993, through March 31, 1994 for pure magnesium, and September 1, 1992, through March 31, 1994, for alloy magnesium.

Nonmarket Economy Country Status

The PRC has been treated as a nonmarket economy country (NME) in all past antidumping investigations (see, *e.g.*, Final Determination of Sales at Less than Fair Value: Sebacic Acid from the PRC, 59 FR 28053, May 31, 1994). No information has been provided in this proceeding that would lead us to overturn this designation. Therefore, in accordance with section 771(18)(c) of the Act, we have treated the PRC as an NME for purposes of these investigations.

Surrogate Country

In accordance with section 773(c)(4) of the Act, we must, to the extent possible, value the factors of production in one or more market economy countries that (1) are at a level of economic development comparable to that of the non-market economy country, and (2) are significant producers of comparable merchandise. Accordingly, we considered potential surrogates that produce comparable merchandise. Although the material inputs used to produce magnesium and aluminum are different, according to both U.S. Bureau of Mines and Department of Commerce experts, both (1) are light metals in terms of molecular weight; (2) are electricity-intensive

products; (3) are produced using an electrolytic process, and (4) share some common end uses (*e.g.*, dye casting). Therefore, in these investigations, we have determined that aluminum constitutes comparable merchandise in the context of surrogate selection.

The Department has determined that India and Indonesia are the countries most comparable to the PRC in terms of being significant producers of comparable merchandise (aluminum) and of overall economic development. (See October 21, 1994, Memorandum from the Office of Policy to the File.) However, our research indicates that electricity rates in India are relatively high as compared to other countries which produce electricity-intensive products. Because high industrial electricity rates normally are inconsistent with significant production of electricity-intensive products such as aluminum, we do not believe that India is an appropriate surrogate country for valuing the factors of production for these products.

Accordingly, we have based foreign market value (FMV) on the values of the appropriate factors of production in Indonesia. We have obtained and relied upon published, publicly available information, wherever possible.

Fair Value Comparisons

In cases involving the PRC, the Department assigns a single rate to all PRC exporters unless a company establishes that it is entitled to a separate rate (see, for example, Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC (59 FR 22585, May 2, 1994)). In these investigations, we have assigned a single rate to all PRC exporters in each investigation.

To determine whether sales of pure magnesium and alloy magnesium from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For both pure magnesium and alloy magnesium, we based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporter to unrelated parties in the United States prior to importation into the United States.

We calculated purchase price based on packed, FOB foreign-port prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, loading, and port handling expenses, valued in a surrogate country. To value freight, we used Indonesian freight rates from a 1991 cable from the U.S. Embassy in Jakarta (see, Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the PRC 56 FR 66831, December 26, 1991). We were unable to obtain loading and port handling expenses valued in Indonesia. For purposes of the preliminary determinations, we valued these expenses based on Indian port charges quoted by an international shipping company.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV for both pure magnesium and alloy magnesium based on factors of production reported by the factory in the PRC which produced the subject merchandise. The factors used to produce pure magnesium and alloy magnesium include materials, labor, and energy. To calculate FMV, the reported factor quantities were multiplied by the appropriate surrogate values from Indonesia for the different inputs. In determining which surrogate value to use for valuing each factor of production, we used, where possible, publicly available, published information.

We used surrogate transportation rates to value inland freight between the source of the production factor and the magnesium factories, and between factories and exporters/ports. Where the producer failed to provide the information on transportation distances for a raw material input, we applied the average of the distances reported for other raw materials.

To value raw materials, we used public information from United Nations Trade Commodity Statistics and Indonesia Foreign Trade Statistics.

To value electricity, we used public information on Indonesia from the Electric Utilities Data Book for the Asian and Pacific Region (January 1993) published by the Asian Development Bank. As the data dated from 1990, we adjusted the electricity values to the appropriate POI using wholesale price indices published in International Financial Statistics (IFS) by the International Monetary Fund. Min He did not report the consumption factor for water and coal. For purposes of these determinations, we estimated these factors based on the ratio of non-electricity energy inputs to the total of material, labor, and energy inputs stated in the petition.

To value hourly labor rates in Indonesia, we used data obtained from the U.S. Department of Labor, Bureau of Labor Statistics on hourly compensation costs in Indonesia's manufacturing sector for 1986, and adjusted the labor rates to the appropriate POI using consumer price indices published in the IFS by the International Monetary Fund, and adjusted for inflation in the same manner identified for electricity.

We were unable to obtain an appropriate factory overhead percentage based on Indonesian experience. Accordingly, for purposes of these determinations, we calculated factory overhead based on information in the petition concerning the experience of a U.S. magnesium producer. For selling, general and administrative (SG&A) expenses, we used the statutory minimum of ten percent of material, labor, energy, and factory overhead because we could not obtain information based on Indonesian industry experience. For profit we used the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses because we could not obtain information on Indonesian industry experience. We added packing based on the surrogate values obtained for the raw materials and labor in Indonesia.

Verification

As provided in section 776(b) of the Act, we will verify all information determined to be acceptable for use in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pure magnesium and alloy magnesium from the PRC, that are entered, or withdrawn from warehouse for consumption on the date of this notice for publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the FMV exceeds the USP, as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
A. Pure Magnesium	
All manufactureres/producers/exporters	108.26
B. Alloy Magnesium	
All manufacturers/produce,s/exporters	79.38

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our

determinations. If one or both of our final determinations is affirmative, the ITC will determine before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than January 26, 1995, and rebuttal briefs, no later than February 2, 1995. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held at 10:00 a.m. on February 6, 1994, at the U.S. Department of Commerce, Room 1412, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If these investigations proceed normally, we will make our final determinations by the 135th day after the date of publication of these determinations in the **Federal Register**.

These determinations are published putsuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: October 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27437 Filed 11–4–94; 8:45 am]

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[A–821–805 and A–821–806]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Pure and Alloy Magnesium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 17, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–3773 or (202) 482–0922, respectively.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of pure magnesium and alloy magnesium from the Russian Federation are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on April 20, 1994, (59 FR 21748, April 26, 1994), the following events have occurred.

On May 16, 1994, the U.S. International Trade Commission (ITC) notified the Department of Commerce (the Department) of its preliminary determinations that there was a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of pure and alloy magnesium from the Russian Federation.

On June 13, 1994, we sent the antidumping questionnaire to the Embassy of the Russian Federation and the two Russian manufacturers (which were identified in the petition). (The antidumping questionnaire was divided into three sections: Section A requesting general information on each company; section C requesting information on, and a listing of, U.S. sales made during the period of investigation ("POI"); and, section D requesting information on the production process, including specific amounts of each input used in manufacturing pure or alloy magnesium.) We requested the Embassy's assistance in forwarding the questionnaire to all exporters and producers of pure or alloy magnesium from the Russian Federation and submitting complete questionnaire responses on their behalf.

In addition to sending questionnaires to the Russian Embassy, during July and August, the Department independently attempted to identify other possible exporters of pure magnesium and alloy magnesium from Russia to the United States during the POI based on information obtained from petitioners, and through examination of PIERS data and other sources of information. Our efforts consisted of issuing an August 8, 1994, survey requesting information on exports to the United States of the subject merchandise; issuing the antidumping questionnaire (limited to Sections A and C) to trading companies operating in various European countries (on August 19, September 7, and September 13, 1994); and a September 15, 1994, follow-up letter to unresponsive questionnaire recipients.

We sent either the survey, the questionnaire, or both documents to 56 companies, with the following results.

Six companies in the pure magnesium proceeding, AlOC, Gerald Metals, Hunter Douglas, Interlink, MG Metals, and Razno Alloys; and two companies in the alloy magnesium proceeding, Gerald Metals and SMW, provided information in response to Sections A and C of the questionnaire.

Twenty-two companies in the pure magnesium proceeding and 27 companies in the alloy magnesium proceeding indicated that they did not sell the subject merchandise to the United States during the POI. The companies that did not export were (a) alloy only: AlOC; HDM; Interlink; MG Metals; Razno and F&S; (b) pure only: SMW (except for a small-quantity trial sale) and (c) both pure and alloy: Intreid; Kemokomplex; Raba Company; Alamet; Compagnie de Mines et Metals; Expromptorg; Fred Lonner & Co., Inc.; Metal Exchange Corporation; Minmeta S.A.; Minmetals Canada, Inc.; Scandinavian Steel AB; Stena Metall Atervinning AB; Sinex AG; Sassoon Metals and Chemicals; IMEX Consulting Sprl; A&L; Steinweg Handelsveem; A. Hartrodt; C. Steinweg Handelsveem B.V.; J. Oosterom & Zoom; and Siegfried Kahn AG.

In each of the two proceedings, seven companies indicated that they were related to companies that had provided information as to whether or not they had made U.S. sales.

Fifteen companies in the pure magnesium proceeding and 14 companies in the alloy magnesium proceeding provided either no response or an inadequate response. The Department received no response from the following 13 companies in both

proceedings: Derek Raphael & Co., Ltd.; Marco Trading; Wogen Group Ltd.; Alex; Mages; and 8 companies that cannot be named in this notice because their identities are deemed business proprietary information. We have designated these 8 companies as companies "A" through "H" in the "Suspension of Liquidation" section of this notice, below. We will, however, identify them to the Customs Service for enforcement of these determinations. Additionally, both F&S (pure only) and W&O Bergmann (both pure and alloy) indicated that they had made POI sales of subject merchandise to the United States, but otherwise ignored our requests for information.

Finally, surveys sent to six companies were returned as undeliverable.

On August 8, 1994, the Department postponed its preliminary determinations until October 27, 1994 (59 FR 42200, August 17, 1994).

On August 10, 1994, the Department provided interested parties with the opportunity to submit published, publicly-available information for the Department to consider when valuing the factor inputs. Petitioners and respondents submitted information on September 7, 1994.

From July through October 1994, the Department received responses to questionnaire sections A and C for pure magnesium from AIOC, Gerald Metals, HDM, Interlink, MG Metals, Razno and SMW. (Note that SMW's trial sale of pure magnesium were not considered by the Department because these sales represent an insignificant portion of the total volume of U.S. sales. Therefore, for the preliminary determination, the Department has not considered SMW to be an exporter of pure magnesium and did not calculate a margin for SMW's trial sales of pure magnesium.)

For alloy magnesium the Department received responses to Sections A and C from Gerald Metals and SMW.

The Department received responses to sections A and D from the following manufacturers: Berezniki Titanium and Magnesium Works (Avisma) and SMW.

On September 12, 1994, Avisma and SMW requested that the Russian Federation be reclassified as a market economy country. They also contended that, if the Department did not revoke the Russian Federation's non-market economy (NME) designation, the Department should determine that the magnesium industry in the Russian Federation is a market-oriented industry (MOI). (See the "Foreign Market Value" section of this notice, below.)

During September and October 1994, the Department requested clarifications of the submitted questionnaire responses from AIOC, Avisma, Gerald Metals, HDM, Interlink, MG, Razno, and SMW. Avisma, Interlink, MG, Razno, and SMW submitted additional response information. Gerald Metals' and HDM's responses to this supplemental information request are not due until after the deadline for these preliminary determinations.

On October 10, 1994, petitioners alleged that critical circumstances exist with respect to imports of alloy magnesium from the Russian Federation. The Department accepted this allegation and requested that Gerald Metals and SMW provide historical information on shipments of alloy magnesium.

Postponement of Final Determinations

Pursuant to section 735(a)(2)(A) of the Act, on October 24, 1994, Gerald Metals, a reseller accounting for a significant proportion of the merchandise in these proceedings, requested that, in the event of affirmative preliminary determinations in these investigations, the Department postpone the final determinations to 135 days after the date of publication of the affirmative preliminary determinations. Avisma and SMW, producers accounting for a significant proportion of merchandise in these proceedings, made a similar request on October 27, 1994. Therefore, we are postponing the final determinations until the 135th day after the publication of this notice in the **Federal Register**.

Scopes of Investigation

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Pure primary magnesium encompasses all products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium), as well as products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium). Products that have the aforementioned primary magnesium content, but that do not conform to ASTM specifications or other industry or customer-specific specifications, are included in the scope of this investigation.

Pure primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to these investigations are currently classifiable under subheadings 8104.11.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

This investigation covers alloy primary magnesium products which

contain 50% or greater, but less than 99.8%, primary magnesium, by weight. Products with the aforementioned primary magnesium content that do not conform to ASTM specifications or other industry or customer-specific specifications are included in the scope of this investigation. In addition to primary magnesium, "alloy" magnesium generally contains one or more of the following items in amounts less than the primary magnesium itself: (1) Other elements deliberately added to the primary magnesium; (2) magnesium scrap or secondary magnesium; (3) oxidized magnesium; and (4) other elements present as impurities.

Alloy primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to these investigations are currently classifiable under subheadings 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The POI in both proceedings is October 1, 1993, through March 31, 1994.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales to the United States of pure magnesium by AIOC, Gerald Metals, HDM, Interlink, MG Metals, and Razno, and sales to the United States of alloy magnesium by Gerald Metals and SMW, were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

B. Non-participating Respondents

All companies to which a questionnaire was issued are considered mandatory respondents in these proceedings. We consider those mandatory respondents that did not respond to the questionnaire to be uncooperative respondents, and we have based the less-than-fair-value margin for those companies on the best information available ("BIA"). For these preliminary determinations, we consider F&S (pure magnesium only) and W&O Bergmann (both pure and alloy magnesium) to be uncooperative respondents, as well as: Derek Raphael & Co., Ltd.; Marco Trading; Wogen Group Ltd.; Alex; Mages; and the eight companies whose names cannot be disclosed because their identities are deemed business proprietary information. Accordingly, we have based these companies' LTFV margins on an uncooperative BIA rate.

F&S's responses to our inquiries indicated sales of pure magnesium but not sales of alloy magnesium. Therefore, only F&S's sales of pure magnesium are subject to a BIA deposit rate.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents which did not cooperate in an investigation. As outlined in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium, 58 FR 37083 (July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. Here, since these companies failed to respond to our questionnaire, we are assigning as BIA to uncooperative exporters a margin of 64.12 percent for pure magnesium and 107.89 percent for alloy magnesium. These margins represent the highest margin in each petition for each product, as recalculated by the Department for the initiation.

C. All Other Companies

We are basing the LTFV margins for all other companies, including those companies which reported that they did not sell the subject merchandise to the United States during the POI, on a simple average of the rates calculated for the mandatory respondents, including rates based on BIA but excluding zero and *de minimis* margins, if any.

United States Price

We based USP for AIOC, Interlink, Gerald Metals, MG Metals (where appropriate), Razno, and SMW on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation into the United States and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

For Interlink, Gerald Metals, MG Metals, Razno and SMW, we calculated purchase price based on packed, CIF, delivered, or FOT warehouse prices to unrelated purchasers in the United States. We made the following deductions (where appropriate): for Razno and SMW, ocean freight and marine insurance; for AIOC, Interlink, Gerald Metals, and MG Metals, ocean freight, marine insurance, U.S. brokerage and handling charges, U.S. duty, U.S. inland freight, and U.S. inland insurance.

We based USP for HDM and, where appropriate, MG Metals, on ESP, in accordance with section 772(c) of the Act, because the subject merchandise was sold to the first unrelated purchaser after importation into the United States.

We calculated exporter's sale price based on packed delivered prices, where appropriate. For HDM, we made deductions, where appropriate, for

ocean freight, marine insurance, U.S. inland freight, U.S. duties, and U.S. brokerage and handling. For MG Metals, we made deductions for foreign brokerage, ocean freight, marine insurance, U.S. duties, inland freight, inland insurance, and U.S. brokerage and handling.

From each exporter's U.S. price, we deducted foreign inland freight between the factory and the reported intermediate destination (*e.g.*, Rotterdam) as follows: For AIOC, SMW, and Razno, we used reported distances and transport modes to calculate an appropriate surrogate factory-to-border freight amount on the basis of surrogate freight rates in Brazil; for Interlink, Gerald Metals, HDM and MG Metals, we deducted the per-ton foreign inland freight amount reported in the petition as best information available because those exporters failed to report in their questionnaire responses information with respect to such charges. We made no deduction from USP to account for either export taxes paid by Russian companies to the Russian government or commissions paid by Russian companies to other Russian companies because (a) the actual amounts paid are an internal expense within an NME country and (b) there is no quantifiable good or service factor for which a surrogate value can be determined. Finally, we adjusted reported marine insurance and ocean freight charges for Razno as follows: a reported figure that appeared to be an extended value (*i.e.*, an amount applicable to the entire transaction) was adjusted to reflect a per-unit amount; for transactions where no figure was reported, we used as the highest reported non-aberrational per-unit amount.

Foreign Market Value

A. Market Reforms in the Russian Federation

In accordance with section 773(c) of the Act, the Department normally uses a factor valuation methodology to calculate foreign market value when the country involved is an NME country and the Department determines that it cannot determine foreign market value based on the respondent's prices or costs. An NME-country respondent may argue that market-driven prices characterize its particular industry and, therefore, despite NME status, that foreign market value should be calculated by using actual home market prices or costs.

In these investigations, the Russian manufacturers, Avisma and SMW, make such a market-oriented-industry ("MOI") claim. Alternatively, the two companies claim that economic conditions now prevalent throughout Russia warrant revocation of Russia's NME-country status, effective January 1, 1994.

The Department's analysis with respect to such claims centers around a government's role in economic activity. Consistent with the factors described in section 771(18), the Department considers the extent to which resources are allocated by the market or government, taking into account government involvement in currency and labor markets, pricing, and production and investment decisions. Where resources are not allocated by the market, it would be difficult to conclude that home market prices or costs should be used to calculate fair value.

Evidence provided in these proceedings indicates that Russia is in the process of implementing extensive reforms to achieve its goal of becoming a market economy. The freeing of most prices in December 1991 and the privatization of most enterprises formerly within the state-planning system are important steps in moving Russia towards a market economy.

We cannot conclude, however, based on the information in this record that Russia should be treated as a market economy for purposes of the antidumping duty law. The Russian economy, having emerged from a centrally-planned system, is in a state of transition. Many of the state controls have been abandoned, but that does not mean that functioning markets have replaced controls. Because the evidence does not demonstrate that prices and costs in Russia adequately reflect market considerations, we cannot at this time alter Russia's designation as a nonmarket economy.

Information on the record also suggests that the government continues to be involved in the Russian magnesium sector. For example, the Russian Federal Committee on Metallurgy, a successor to the Ministry of Industry (Metallurgy Department), indicated in an official statement that it controls activity in the magnesium industry in Russia, noting particularly that it coordinates production, exports, and prices. Also, although the two producers under investigation have been privatized, this same statement indicates that the Committee may be using the remaining government interest in these companies to carry out its intentions with respect to pricing and production. For these reasons, we have determined that the prices or costs of producing magnesium in Russia should not be used to calculate fair value.

B. Surrogate Country Selection

In accordance with section 773(c)(4) of the Act, we must, to the extent possible, value the factors of production in one or more market economy countries that (1) are at a level of economic development comparable to that of the non-market economy country, and (2) are significant producers of comparable merchandise. Thus, we have considered as possible surrogates those countries that are economically comparable to Russia and that produce identical or comparable merchandise. Of those countries that we have determined to be economically comparable, Brazil is the only country that is a significant producer of the identical merchandise, magnesium. (See October 21, 1994, Memorandum from the Office of Policy to the file.) Accordingly, we have based FMV on the values of the appropriate factors of production as valued in Brazil. We have obtained and relied upon published, publicly available information, wherever possible.

C. Factors of Production

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for the above-mentioned exporters. The factors used to produce pure and alloy magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, *see* our calculation memorandum.) We then added amounts for general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

To value the raw materials, we used publicly available information for Brazil from the United Nations Trade Commodity Statistics (*UN Trade Statistics*) for January–December 1992. We did not attempt to adjust raw material factor values to account for inflation between 1992 and the POI because the figures were reported in dollars, and we had no indication as to how exchange rates, currency reforms, and hyperinflation could properly be taken into account. For those raw materials for which we were unable to obtain publicly available information from Brazil, we used data provided in the petition.

To value heavy oil, we used 1993 data for Brazil from the Energy Information Administration's International Energy Annual. Although this value for heavy

oil is tax-inclusive, it is the only data found for heavy oil in Brazil.

Natural gas was valued using information from the petition on prices in Brazil because we could find no other source for prices of this product.

To value electricity for industrial use, labor, and freight rates for both truck and rail, we used information reported by the U.S. Consulate in Belo Horizonte, Brazil.

To value factory overhead, we calculated percentages based on elements of constructed value data reported in the Antidumping Investigation of Silicomanganese from Brazil (see public version of respondents' June 17, 1994, submission in that proceeding). We adjusted the figure to reflect an energy-exclusive overhead percentage.

For selling, general and administrative (SG&A) expense and profit percentages, we used statutory minimum of 10 percent, of materials, labor, and factory overhead. For profit we used the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses. No surrogate country information reflected percentages for SG&A and profit that were above the statutory minima.

To value packing materials, we also used information provided in the UN Trade Statistics for Brazil for January through December 1992. We added surrogate freight costs for the delivery of inputs and packing materials to the factories producing pure and alloy magnesium. For SMW, we used the actual cost for one factor, plastic, because it had been imported from a market economy country and paid for in convertible currency.

Verification

As provided in section 776(b) of the Act, we will verify information determined to be acceptable for use in making our final determinations.

Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of alloy magnesium from the Russian Federation. Under 19 CFR 353.16(a), critical circumstances exist if (1) there is a history of dumping in the United States or elsewhere of the same class or kind of merchandise as the merchandise subject to the investigation; *or* the importer knew or should have known that the producer or reseller was selling the merchandise at less than its fair value; and (2) there have been massive imports of the merchandise over a relatively short period of time.

In determining whether imports were massive, 19 CFR 353.16(f)(1) instructs consideration of:

(i) The volume and value of the imports;
(ii) Seasonal trends; and
(iii) The share of domestic consumption accounted for by the imports.

Further, 19 CFR 353.16(f)(2) states that imports will not generally be considered massive unless they have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration.

With respect to the question of whether there is a history of dumping, we consider whether there has been an antidumping order covering the imports of the investigated product into the United States or another country. To determine whether the importers of alloy magnesium from Russia knew, or should have known, that the products were being sold at less than fair value, we considered the company-specific preliminary margins in these investigations. We consider margins of 25 percent or more (when USP is purchase price) and 15 percent (when USP is ESP) sufficient to impute knowledge. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, 37078, July 9, 1993).

For all exporters except Gerald Metals and SMW, the margin calculated with respect to alloy magnesium exceeds 25 percent. However, for Gerald Metals and SMW, the company-specific margins do not exceed 25 percent. Accordingly, we must also consider whether there is a history of dumping in the United States or elsewhere with respect to alloy magnesium from Russia in order to determine whether critical circumstances exist with respect to those companies. We are aware of no outstanding antidumping duty orders with respect to alloy magnesium from the Russian Federation. For those companies with estimated margins that exceed 25 percent, we determine that importers knew or should have known that sales were at LTFV prices.

The Department's official import statistics show that the volume of Russian alloy magnesium entries during the post-petition period of April through June 1994 (79.0 metric tons) exceeds that of the January through March 1994 pre-petition period (31.1 metric tons) by 154 percent. Nothing on the record indicates that this increase observed was the result of seasonal trends. With respect to share of domestic consumption, the information available to us at this time does not allow us to evaluate whether the increase can be accounted for by a change in domestic consumption

Therefore, we find that imports were massive over a relatively short period.

Accordingly, we preliminarily determine that critical circumstances exist with respect to imports of alloy magnesium from the Russian Federation except with respect to imports of alloy magnesium sold by Gerald Metals and SMW.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pure magnesium from the Russian Federation (except those that represent sales by AIOC, Gerald Metals, Hunter Douglas, Interlink, or MG Metals) entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also directing the Customs Service to suspend liquidation of all entries of alloy magnesium from the Russian Federation (except those that represent sales by Gerald Metals or SMW) entered, or withdrawn from warehouse, for consumption on or after either (a) the date that is 90 days prior to the date of publication of this notice in the **Federal Register** or (b) the date of publication of this notice in the **Federal Register**, as appropriate. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

Consistent with our practice in investigations involving imports from NME countries, we have, in each of the two proceedings, calculated a single rate applicable to all exporters in the Russian Federation. The record in these investigations indicates that all Russian exporters of magnesium responded to our questionnaire. Although SMW requested a separate rate, we have not addressed the request because, in each proceeding, the rate for SMW and all other exporters in Russia is the same irrespective of whether or not SMW warrants a separate rate.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentages		Critical circumstance (alloy)
	Pure	Alloy	
AIOC	0.00	[1] 107.89	Yes.
Gerald Metals	.00	.00	No.
Hunter Douglas	.00	[1] 107.89	Yes.
Interlink	.00	[1] 107.89	Yes.
MG	[2] .13	[1] 107.89	Yes.
Razno and all Russian Exporters [3]	5.06		
SMW and all Russian Exporters [4]	.....	.00	No.
F&S	64.12	[1] 107.89	Yes.
W&O	64.12	107.89	Yes.
Derek Raphael & Co., Ltd	64.12	107.89	Yes.
Marco Trading	64.12	107.89	Yes.
Wogen Group Ltd	64.12	107.89	Yes.
Alex	64.12	107.89	Yes.
Mages	64.12	107.89	Yes.
Company A	64.12	107.89	Yes.
Company B	64.12	107.89	Yes.
Company C	64.12	107.89	Yes.
Company D	64.12	107.89	Yes.
Company E	64.12	107.89	Yes.
Company F	64.12	107.89	Yes.
Company G	64.12	107.89	Yes.
Company H	64.12	107.89	Yes.
All others not located in Russia	60.43	107.89	Yes.

[1] Represents the "all others rate" for this product; does not denote a company-specific margin percentage.
[2] *De Minimis.*
[3] Pure Magnesium Only.
[4] Alloy Magnesium Only.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If one or both of our final determinations are affirmative, the ITC will determine before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 17, 1995, and rebuttal briefs, no later than February 24, 1995. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 28, 1995, at 10:00 a.m. at the U.S. Department of Commerce, Room 1412, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If these investigations proceed normally, we will make our final determinations by the 135th day after the date of publication of the affirmative preliminary determinations in the **Federal Register**.

These determinations is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: October 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27436 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–824]

Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Kullman or John Brinkmann, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.; Washington, DC 20230; telephone: (202) 482–1279 or (202) 482–5288, respectively.

FINAL DETERMINATION: We determine that imports of silicomanganese from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination and postponement of the final determination of this investigation on June 10, 1994, (59 FR 14852, June 17, 1994), the following events have occurred:

On June 16, 1994, the U.S. Department of Commerce (the Department) received the response of Companhia Paulista de Ferro-Ligas and Sibra Eletro-Siderurgica Brasileira S/A (collectively "Paulista") to the Department's cost of production (COP) and constructed value (CV) questionnaire. The Department sent a COP/CV deficiency questionnaire to Paulista on July 8, 1994, which the company answered on July 29, 1994. On August 3, 1994, the Department sent a letter requesting additional clarification, which the company responded to on August 23, 1994.

The Department conducted verification in Brazil of Paulista's COP/CV response in August 1994.

On September 2, 1994, Paulista informed the Department that it would no longer be participating in the investigation. Paulista cited a lack of personnel and the fact that the company was operating under the Brazilian equivalent of U.S. Chapter 11 bankruptcy protection as reasons why it was withdrawing from the investigation. Paulista requested that all of its proprietary information be removed from the record.

The petitioners (Elkem Metals Company and the Oil, Chemical & Atomic Workers, Local 3–639) submitted a case brief on September 23, 1994. Paulista submitted a rebuttal brief on September 28, 1994. At petitioners' request, a public hearing was held on September 30, 1994.

Scope of the Investigation

The merchandise covered by this investigation is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation is June 1, 1993, through November 30, 1993.

Such or Similar Comparisons

We have determined that the merchandise subject to this investigation constitutes two such or similar categories, lumps and fines.

Best Information Available (BIA)

As noted in the "Case History" section of this notice, Paulista withdrew from the investigation after completion of the COP/CV verification and requested that all of its proprietary data be removed from the record. Section 776(c) of the Act provides that whenever a party refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Department shall use BIA as a basis for its determination. Consequently, we have based this determination on BIA.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions to those respondents found to be uncooperative in an investigation. The Department's two-tiered methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See Allied Signal v. United States*, 996 F.2d 1185 (Fed. Cir. 1993) (June 22, 1993)).

When a company refuses to cooperate or otherwise significantly impedes an investigation, the Department normally uses as BIA the highest of: (1) the highest margin in the petition; (2) the highest margin calculated for any other respondent within the same country for the same class or kind of merchandise; or (3) the estimated margin found for the affected firm in the preliminary determination. (*See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19033 (1989)).

As detailed in the DOC position in Comment 1 below, we consider Paulista to have been uncooperative. Under our standard practice, we would have selected as the most adverse BIA for this investigation the estimated margin found for Paulista in the preliminary determination. However, because Paulista withdrew all of its proprietary data from the record, we cannot rely on the preliminary determination. *Smith Corona Corp. v. United States*, 796 F.Supp. 1532 (CIT 1992) (*Smith Corona*). It would be inappropriate to allow Paulista to thwart proper administration of the law and reward its uncooperative behavior by selecting as BIA the highest rate in the amended petition, which is less adverse than the preliminary rate. Therefore, we assigned to Paulista a BIA margin by comparing United States price (USP) to CV, based on information in the record. (For a discussion of this BIA calculation see the "Fair Value Comparisons" section of this notice and Comment 2 below).

In calculating the "All Others" rate, the Department normally weight averages all positive margins found in the investigation, including BIA rates. As discussed above, as an uncooperative respondent, Paulista will receive an adverse BIA margin. Because Paulista's margin is the only margin found in the investigation, under our normal practice, its margin would become the "All Others" rate. The Department notes, however, that in *Smith Corona*, the Court of International Trade (CIT) held that the Department may assign a rate lower than the highest available rate to nonparticipants in an investigation, when those parties (1) had no control over the sole respondent's withdrawal of documentation, (2) had no reason to believe that an adverse rate would be selected for the respondent as a result of the withdrawal of information, and (3) had no opportunity to offer their own data.

In the present case, as in *Smith Corona*, producers/exporters who were not respondents had no control over Paulista's withdrawal of its information, had no reason to believe that Paulista would receive an adverse rate as a result of withdrawing information, and by virtue of the point at which Paulista withdrew its information from the record, had no opportunity to submit their own data for analysis and verification. We have concluded that, under these circumstances, assigning an adverse BIA rate to all other producers/exporters would be inappropriately punitive. Therefore, the Department has based the "All Others" rate in this investigation on the dumping margin which formed the basis for the initiation of this investigation.

Fair Value Comparisons

As BIA, we have calculated a margin for Paulista based on a comparison of

USP and foreign market value (FMV). USP was based on information contained in the petition, as fully described in the notice of initiation of this investigation (58 FR 64553, December 8, 1993). FMV was based on CV, using data submitted by petitioners and relied upon by the Department in its initiation of the COP investigation (*See,* Memorandum from Richard W. Moreland to Barbara R. Stafford, May 13, 1994, on file in Room B–099 of the Main Commerce Building), adjusted for interest expense and profit. In accordance with section 773(e)(1)(B)(ii), we added the statutory minimum of eight percent for profit and recalculated interest expense based on the consolidated results of the operations of Paulista for the year ending December 31, 1993, as reflected in its public financial statements. Since FMV is based on a CV, which is exclusive of any value added taxes (VAT), we have adjusted USP to exclude the VAT adjustment that was made for purposes of this initiation.

Interested Party Comments

Comment 1: Petitioners argue that the Department should find Paulista uncooperative because it withdrew its participation from the investigation and removed all of its proprietary information from the record.

Paulista states that the company devoted significant time and resources to provide the information requested by the Department during the course of the investigation, allowed verification of its cost response and provided additional information to the Department after the cost verification.

DOC Position: We agree with petitioners. By withdrawing from the investigation, Paulista significantly impeded the completion of the Department's investigation. Moreover, in light of Paulista's removal of all of its proprietary information from the record, the Department has no choice but to treat Paulista as an uncooperative respondent. This action has the consequence of expunging from the administrative record the basis for showing, either now or on appeal, that Paulista had been cooperative during this investigation. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Italy,* 58 FR 37153 (July 9, 1993); *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from France,* 58 FR 6205 (January 27, 1993)).

Comment 2: Petitioners argue that Paulista withdrew from the investigation only after recognizing that the results of the investigation would be more favorable if based on the petition or initiation rate. Consequently, petitioners argue that the Department must look beyond the pool of rates identified in its two-tier BIA policy, since none of those rates was sufficiently adverse to compel Paulista's cooperation. Petitioners contend that, as BIA, the Department should use data in petitioners' COP allegation and Paulista's financial statements to calculate FMV, and data provided in Paulista's own ranged public submissions of its questionnaire response to calculate USP. In addition, the petitioners contend that because Paulista was uncooperative, the Department should "de-range" USP information provided in the public version of Paulista's response by reducing gross prices by 10 percent and increasing the foreign movement charges and U.S. selling expenses by 10 percent.

Paulista agrees that BIA is warranted in this investigation. However, Paulista contends that the company's ranged public data should not be used to calculate USP. Paulista argues that the use of its ranged public data as BIA would be unprecedented and contrary to the intent of the Department's public summary requirements, which is to provide meaningful summaries of data for the public. Additionally, Paulista asserts that there is sufficient information on the record in this investigation to establish a BIA dumping rate without resorting to the use of ranged data.

DOC Position: We agree with the petitioners that Paulista should not be rewarded for withdrawing from the investigation. In order to assign Paulista an adverse BIA rate, the Department cannot rely on the margin calculated in the preliminary determination because the use of such a rate would not comport with the CIT's decision in *Smith Corona.* While the Department might otherwise rely on the amended petition for purposes of BIA, given the circumstances of this case and the intent of the statute, we do not find that the rates contained in that petition provide an adequate basis for BIA. Section 776(c) of the Act provides for the use of BIA to compel participation. Further, a more adverse BIA is required where a respondent fails to cooperate or significantly impedes the investigation, as in this case. The preliminary margin was substantially higher than the rate found in the amended petition for purposes of initiation. To use the petition rate would, in effect, reward the respondent for refusing to cooperate. Moreover, a precedent could be set which would encourage a respondent to withdraw from a proceeding and remove its proprietary information from the record whenever the margin found in the preliminary determination exceeded that which formed the basis of the initiation (*e.g., Krupp Stahl A.G. v. United States,* Slip Op. 93–84, May 26, 1993).

We disagree, however, with petitioners' proposed selection of BIA. Although the Department has used such ranged data as a basis for BIA in the past, the use of such information is a last resort. In this instance, we are not compelled to use the ranged data in order to calculate an adverse final determination rate. There is sufficient data available in petitioners' COP allegation and Paulista's public financial statement to calculate a FMV based on CV. This methodology is consistent with both past practice (*see, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium,* 58 FR 37083 (July 9, 1993), and with the CIT's holding that respondents should not realize a benefit from noncooperation

Continuation of Suspension of Liquidation

In accordance with Section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of silicomanganese from Brazil that are entered, or withdrawn from warehouse, for consumption on or after June 17, 1994, the date of publication in the **Federal Register** of our preliminary determination. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The dumping margins are as follows:

Producer/manufacturer exporter	Antidumping margin
Paulista	64.93
All Others	17.60

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45

days. If the ITC determines that material injury, or threat of material injury, does not exist with respect to the subject merchandise, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility, pursuant to 19 CFR 353.34(d), concerning the return or destruction of proprietary information disclosed under APO. Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27546 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–828]

Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Kullman or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW; Washington, DC 20230; telephone: (202) 482–1279 or (202) 482–0186, respectively.

FINAL DETERMINATION: We determine that imports of silicomanganese from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination (59 FR 31199, June 17, 1994) the following events have occurred: On June 28, 1994, counsel withdrew its representation for the two responding firms in this investigation; and on July 28, 1994, at the request of two non-responding firms with significant silicomanganese exports, the final determination was postponed (59 FR 40008, August 5, 1994). No further comments were submitted.

Scope of the Investigation

The merchandise covered by this investigation is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is June 1 through November 30, 1993.

Best Information Available

As detailed in our preliminary determination, the Department sent antidumping questionnaires to 18 producers and exporters that may have sold silicomanganese to the United States during the POI. Further, we sent an antidumping questionnaire to the PRC Ministry of Foreign Economic Trade and Cooperation (MOFTEC) and requested that MOFTEC: (1) Furnish the questionnaire to any silicomanganese producers and exporters with U.S. sales during the POI that were not on our list of 18 companies, and (2) provide a comprehensive list of those additional companies that received the questionnaire from MOFTEC. Two companies, a PRC producer of silicomanganese and a Hong Kong export company that purchased silicomanganese from that company and sold it to the United States, were found by the Department not to have had any sales during the POI. Further, we did not receive responses from MOFTEC and the remaining potential respondents. Accordingly, given that no information was submitted by potential respondents with respect to sales during the POI, we have based our final determination on best information available (BIA), in accordance with section 776(c) of the Act.

The BIA methodology is described in the notice of preliminary determination. In this case, BIA is the information contained in the petition, as amended on November 24, 1993 (*See Initiation of Antidumping Duty Investigations: Silicomanganese from Brazil, the People's Republic of China, Ukraine and Venezuela*, 58 FR 64553, December 8, 1993). The amended petition provides only one margin, listed below, for all PRC producers and exporters of silicomanganese.

Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of silicomanganese from the PRC. In our preliminary determination, pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we analyzed the allegations using the Department's standard methodology. Because no additional information was submitted since the preliminary determination, the Department is using the same analysis as explained in its preliminary finding and determines that critical circumstances exist for imports of silicomanganese from the PRC.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of silicomanganese from the PRC that are entered, or withdrawn from warehouse, for consumption on or after March 18, 1994 (*i.e.*, 90 days prior to the date of publication of our preliminary determination in the **Federal Register**). The Customs Service shall require a cash deposit or posting of a bond equal to 150.00 percent *ad valorem* on all entries of silicomanganese from the PRC. This suspension of liquidation will remain in effect until further notice.

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threatening material injury to the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27545 Filed 11–4–94; 8:45 am]

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[A–307–811]

Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Greg Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5288 or (202) 482–2336, respectively.

FINAL DETERMINATION: We determine that imports of silicomanganese from Venezuela are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination and postponement of the final determination of this investigation on June 10, 1994, (59 FR 31204, dated June 17, 1994), the following has occurred:

On June 27, 1994, Hornos Electricos de Venezuela, S.A. de C.V. (Hevensa) submitted its response to Section D of the Department of Commerce's (the Department) questionnaire. (Section D of the questionnaire requests information on the cost of production (COP) and constructed value (CV).) On June 29, 1994, Hevensa submitted a revised version of this response correcting bracketing errors. On July 12, 1994, Hevensa also submitted supplemental responses to its March 1, 1994, and April 19, 1994, submissions.

The Department requested additional information regarding Section D of the questionnaire on July 14, 1994. Hevensa submitted this information on August 15, 1994.

Verification of Hevensa's sales and COP/CV questionnaire responses was conducted in July and September 1994, respectively.

Hevensa and petitioners submitted case briefs on October 3, 1994, and rebuttal briefs on October 6, 1994. At Hevensa's request, the Department held a public hearing on October 7, 1994.

Scope of the Investigation

The merchandise covered by this investigation is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is June 1, 1993, through November 30, 1993.

Such or Similar Comparisons

We made fair value comparisons using the following such or similar categories: (1) lumps and (2) fines. Where we were not able to compare U.S. sales to sales of identical merchandise, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, on file in Room B–099 of the main building of the Department.

Fair Value Comparisons

To determine whether Hevensa's sales to the United States of silicomanganese were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary determination.

Foreign Market Value

As noted in our preliminary determination, we initiated a COP investigation on May 9, 1994, based on an allegation by the petitioners (*see* decision memorandum from Richard Moreland to Barbara Stafford, dated May 9, 1994). On the basis of petitioners' allegations, we gathered and verified data on production costs. Because Hevensa's COP response was not due until after the date of the preliminary determination, this information was not considered for the preliminary determination.

A. *Calculation of COP*

In order to determine whether prices were above the COP, we calculated the COP in accordance with 353.51(c) of the Department's regulations. Our calculations of COP were based on the sum of Hevensa's submitted costs of materials, fabrication, general expenses, and packing, except in the following instances where we determined that the costs were not appropriately quantified or valued. Specifically, we:

1. Recalculated depreciation expense based on the restated value of Hevensa's fixed assets;

2. Disallowed Hevensa's claimed foreign exchange gains on client accounts receivable;

3. Reclassified foreign exchange gains and losses on the purchase of input materials from financing expense to cost of manufacturing;

4. Recomputed general and administrative expense and interest expense using a cost of sales figure adjusted for depreciation expense and exchange losses on material purchases as noted in 1 and 3 above;

5. Included the same amount of value-added tax (VAT) in home market COP as is included in the domestic sales prices; and

6. Added the additional charge incurred by Hevensa for the production of the Grade C product, as negotiated with its contractor.

B. *Test of Home Market and Third Country Sale Prices*

After calculating COP, we tested whether home market and third country sales of silicomanganese were made at prices below COP.

We compared product-specific COP to reported prices that were net of movement charges, discounts, rebates, direct and indirect selling expenses, and inclusive of VAT. If over 90 percent of a respondent's sales of a given product were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between ten and 90 percent of a respondent's sales of a given product were at prices above the COP, we discarded only the below-cost sales if made over an extended period of time. Where we found that more than 90 percent of respondent's sales of a given product were at prices below the COP and were sold over an extended period of time, we disregarded all sales for that product and calculated FMV based on constructed value (CV).

In order to determine that below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: 1) if a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or 2) if a respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

C. *Results of COP Test*

We found that more than 90 percent of Hevensa's third country sales of Grade C fines were sold at below-COP prices over an extended period of time. Hevensa provided no indication that these below-COP sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. Therefore, we disregarded all third country sales of Grade C fines. For U.S. sales left without a match as a result of disregarding these below-COP sales, we based FMV on CV.

We found that more than ten percent but less than 90 percent of Hevensa's sales of Grade B silicomanganese lump, size 5" x 1", were sold at below-COP prices over an extended period of time. Therefore, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's cost of production.

Price-to-Price Comparisons

We calculated FMV using the methodology described in our notice of preliminary determination, with the following exceptions:

1. We matched the 5" x 2" material sold in the United States to the 5" x 1" material sold in the home market instead of to the 4" x 2" material sold in the home market.

2. We matched 30mm x 6mm Grade C lump material to CV (*see* concurrence memorandum, dated October 31, 1994).

3. We matched the 6mm x 1mm Grade C fines sold in the United States to CV because more than 90 percent of respondent's sales of this product were at prices below the COP and were sold over an extended period of time.

Price to CV Comparisons

In the instances noted above and where there was otherwise no matching home market or third country sale, we based FMV on CV. We calculated CV based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing cost. We made all adjustments described in the COP section (except for the inclusion of VAT) in calculating CV. In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of the company's reported general expenses or the statutory minimum of ten percent of the cost of manufacture. For profit, we used the actual profit earned by Hevensa where the actual figure was greater than the statutory minimum of eight percent of the sum of COM and general expenses, in accordance with section 773(e)(1)(B)(ii) of the Act.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified information provided by Hevensa by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: Hevensa asserts that its home market sale of Grade C lump silicomanganese during the POI was outside the ordinary course of trade and, therefore, should not be used to calculate FMV for the 30mm x 6mm Grade C merchandise. Hevensa asserts that the home market sale was the only such sale made during the POI, that the amount of the sale was smaller than those made in Hevensa's ordinary home market sales, and that the sale was made on a trial basis to a trader who had requested a different product that was not available at the time.

Petitioners assert that the sale was a legitimate one and the fact that it was for a smaller than usual amount is not enough to indicate that it was outside the ordinary course of trade.

DOC Position: We agree with Hevensa. During verification, we satisfied ourselves that the home market sale of 30mm x 6mm Grade C material was a trial amount sold outside the ordinary course of trade. This was the only sale of a trial amount during the 16 months examined at verification. Moreover, Hevensa did not make any other sales to this customer during that period of time.

Comment 2: Hevensa contends that the Department should use monthly or bi-monthly weighted-average FMVs, rather than the normal six-month average FMV, to calculate whether there is a margin of dumping in this investigation. Hevensa argues that, during the POI, the interplay among the Venezuelan rate of inflation, the U.S. dollar-based prices of the subject merchandise, and the changes in the exchange rate for U.S. dollars and Venezuelan bolivars, could create a margin of dumping if a weight-averaged FMV were used for the entire POI.

Petitioners argue that Hevensa is requesting that the Department adopt a methodology that is inconsistent with its practice in hyperinflationary

economy cases. Additionally, the petitioners assert that, if Hevensa's monthly FMVs were adopted, any comparison between the FMV and the U.S. price would be distorted. Specifically, the petitioners argue that Hevensa is requesting that the Department apply, in effect, only that part of its methodology for hyperinflationary economies calling for the use of monthly FMVs, not the part of the methodology calling for the submission of costs on a replacement basis.

DOC Position: We disagree with respondent's argument that the Department should use monthly or bi-monthly weighted-average FMVs because of the high rate of inflation in Venezuela during the POI. However, it should be noted that the Department has calculated two weighted-average FMVs to accommodate the introduction of VAT in Venezuela during the last two months of the POI. Because Hevensa's U.S. sales were only invoiced during the last two months of the POI, it happens that Hevensa's U.S. sales of the merchandise in question were compared only to a two-month VAT-inclusive weighted-average FMV.

We agree with the petitioners that it would be inappropriate to apply only the averaging portion, and not the replacement cost portion, of our hyperinflationary economy methodology. Although information on the record of this investigation would permit the Department to calculate the FMV on a monthly or bi-monthly basis, if we were to find the Venezuelan economy to be hyperinflationary during the POI, our methodology for hyperinflationary economies also requires us to calculate the cost of production on a replacement cost basis. It is not possible for us to calculate Hevensa's replacement costs because Hevensa has insisted, and we have accepted, that the Venezuelan economy during the POI was not hyperinflationary. Accordingly, Hevensa has not supplied the Department with its replacement costs, and we have applied our standard non-hyperinflationary methodology in this final determination.

Comment 3: Hevensa argues that the Department should revise its level-of-trade analysis from the preliminary determination. During the POI, all of Hevensa's U.S. sales were made to Mannesmann, who resold the silicomanganese. Hevensa contends that, in the preliminary determination, it was inappropriate for the Department to compare Hevensa's sales to Mannesmann to Hevensa's home market sales to a home market trader because its home market trader does not perform the same role as Mannesmann. Rather, Hevensa claims that Mannesmann functions as a commission agent, while the home market trader functions as a wholesaler.

Petitioners assert that the Department focuses on the customer's function in the distribution chain to classify sales by level of trade and that Mannesmann functions as any trader does, *i.e.*, it takes title to the material and then resells it. Accordingly, the petitioners argue that both Mannesmann and Hevensa's home market trader "have the same place in the chain of distribution—to sell to end-users and, therefore, they are at the same level of trade."

DOC Position: We agree with the petitioners. We view the level of trade of the sales between Hevensa and its home market trader as being functionally equivalent to the level of trade of Hevensa's sales to Mannesmann. Both Mannesmann and the home market trader are wholesalers, and both are taking title to the merchandise prior to reselling it (*see* Concurrence Memo for this final determination).

Comment 4: The petitioners argue that the Department should compare Hevensa's U.S. sales of 5" x 2" Grade B lump silicomanganese with home market sales of 5" x 1" Grade B lump silicomanganese to Hevensa's home market trader/wholesaler (*i.e.*, at the same level of trade).

Hevensa argues that, if the Department decides that its U.S. sales to Mannesmann are at the same level of trade as its home market sales to the trader (*see* Comment 3, above), the Department should not take level of trade into account when making comparisons. Hevensa contests comparisons based on level of trade because there was no correlation between its prices and selling expenses on the one hand, and levels of trade on the other. Hevensa asserts both that its average prices for 5" x 1" Grade B lump material were higher to its home market trader than to its home market end users, and that its selling expenses were roughly equivalent for both traders and end users. Moreover, Hevensa asserts that its sales to both categories of customers were made by the same sales department, within the same sales process, and that no additional technical support or additional services were provided to either category of customer.

DOC Position: We agree with Hevensa. Level of trade can be an important distinction where respondents charge different prices and incur different selling expenses at the different levels of trade. Here, where the home market trader operates at an intermediate level between Hevensa and the end users, Hevensa's prices to the trader logically would be lower than its prices to end users if there were a relationship between Hevensa's prices and level of trade. Instead, Hevensa has demonstrated that its average prices to the trader were marginally higher than its prices to end users.

The Department also verified that direct selling expenses, with the exception of certain differences in the average credit days for the home market trader and some home market end users, were similar. During verification, we did not note any differences between home market and end-user sales processes or sales services. Furthermore, there is no other information on the record that indicates differences existed for indirect selling expenses. Accordingly, the Department has not taken the level of trade into account but, rather, has compared Hevensa's U.S. sales of 5" x 2" Grade B material to Mannesmann to the home market sales of 5" x 1" grade material to both the home market trader and the home market end users.

Comment 5: Hevensa argues that the Department should include the amount that the customer was required to pay for VAT when calculating Hevensa's imputed credit expenses on its home market sales. It contends that when it extends credit to its home market customers, it necessarily agrees to a delay in the payment of the full amount owed by the customer, including the VAT. Therefore, the Department must calculate an imputed cost for the full amount of the delayed payment.

The petitioners argue that the Department should not consider VAT in calculating imputed credit. The petitioners assert that Hevensa does not necessarily owe VAT at the time it ships to the purchaser and, in some instances, it may not owe the tax until after it has received payment from the purchaser. The petitioners also state that if the Department were to allow an imputed credit adjustment for the VAT tax, the date of invoice would not be the proper date for calculation. Moreover, the petitioners argue that in cases where the purchaser had paid Hevensa the purchase price, including VAT, prior to the date on which Hevensa owed VAT to the government, the Department would have to calculate a credit revenue for Hevensa.

DOC Position: The Department's practice is to calculate credit expenses exclusive of VAT. (See the discussion of our VAT methodology in the preliminary determination (59 FR

31204, 31205, June, 17, 1994.) Theoretically, there is an opportunity cost associated with any post-service payment. Accordingly, to calculate the VAT adjustment argued by Hevensa would require the Department to calculate the opportunity costs involved with freight charges, rebates, and selling expenses for each reported sale. It would be an impossible task for the Department to attempt to determine the opportunity cost of every such charge and expense.

Comment 6: Hevensa argues that the VAT methodology employed by the Department in its preliminary determination distorted the Department's calculations by inflating—and possibly creating—the dumping margins found on Hevensa's sales.

The petitioners argue that the VAT methodology employed in the preliminary determination is consistent with the Department's practice.

DOC Position: We agree with petitioners. As we explained in our preliminary determination, we multiplied the foreign VAT rate by the price of the U.S. merchandise at the same point in the chain of commerce that the foreign market VAT was applied to foreign market sales, and we added this product to the U.S. price. The Department also deducted from the USP and FMV those portions of the respective home market tax and the USP tax adjustments attributable to expenses. This methodology was adopted by the Department to comply with *Federal-Mogul Corp. and Torrington Co.* v. *United States*, 834 F. Supp. 1391 (CIT 1993) and has been the Department's practice since this ruling. See also, *Avesta Sheffield, Inc.* v. *United States*, 838 F. Supp. 608 (CIT 1993).

Comment 7: The petitioners argue that the Department should calculate duty drawback on only those export shipments of silicomanganese that correspond to valid "Admission Temporal par Perfectionsmiento Activo (ATPA)" permits of the Venezuelan government.

Hevensa concedes that its ATPA had lapsed for the period from June 29, 1993, through November 2, 1993. However, it argues that it is eligible for duty drawback on all exports after November 2, 1993, and that it has the right to request the Venezuelan authorities to modify its documents to apply other shipments against the ATPA.

DOC Position: We agree with the petitioners. The record demonstrates that Hevensa was only authorized duty drawback on the particular export sales for which an ACTA was in effect at the time the silicomanganese was exported. Accordingly, we have calculated duty drawback adjustments for only such sales.

Comment 8: The petitioners argue that the Department should base the adjustment of FMV for royalties on the amount of the fee for services that had been established between Hevensa and the provider of the technical services and which Hevensa had accrued during the POI.

Hevensa argues that the fee it had agreed to with the provider of the technical services and which it had been accruing during the POI was not approved by the Venezuelan Superintendent of Foreign Investments (SIGHTS) and that the accrued rate had been adjusted subsequently because the original amount had not been authorized by SIGHTS. Hevensa asserts that the adjustment must be based on the amount that SIGHTS approved.

DOC Position: We agree with Hevensa. We have adjusted the royalty expense to reflect the amount that the Venezuelan government permitted Hevensa to pay for the POI.

Comment 9: Petitioners assert that the silicomanganese slag further processed into Grade C silicomanganese by Hevensa is a co-product of Grade B silicomanganese. The petitioners also state that because the silicomanganese slag should be considered a co-product to the Grade B silicomanganese, the Department should allocate Hevensa's production costs equally between Grade B silicomanganese and silicomanganese slag. The petitioners support the argument that the slag should be classified as a co-product by noting that both the Grade B silicomanganese and the slag share a single common production process. The petitioners also argue that inasmuch as only minor processing is necessary to process the slag into Grade C silicomanganese, the value of the Grade C silicomanganese is representative of the value of the slag, and that this value is significant because of the percentage of total sales that Grade C silicomanganese accounted for during the POI.

Hevensa argues that the silicomanganese slag generated in the production of its Grade B silicomanganese is a waste product and, therefore, should not be treated as a co-product. Hevensa cites to the petition in this investigation in which silicomanganese slag was classified as a waste product that received no assignment of costs as support for its treatment of the silicomanganese slag. Hevensa also argues that the silicomanganese slag is not a finished product and cannot be sold without substantial further processing.

DOC Position: We disagree with the petitioners. In determining how to allocate costs among various products manufactured during the course of producing the merchandise subject to the investigation, the Department, pursuant to Section 773(e) of the Act, looks to the value of the other products relative to the value of all products produced during, or as a result of, the process of manufacturing the product under investigation. *See, e.g., Final Determination of Sales at Less Than Fair Value (SLTFV): Sebacic Acid From the People's Republic of China*, 59 FR 28053, 28056 (May 31, 1994). *See also IPSCO, Inc. v. U-Stat*, 965 F.2d 1056 (Fed Cir. 1992). If the value of the joint product is significant, the Department will treat such product as a co-product, with the result that all costs incurred in the production process are allocated based on the relative quantity of output of the joint products. *Id.*, 965 F.2d at 1060.

In this case, the silicomanganese slag further processed into Grade C silicomanganese is not a co-product of the Grade B silicomanganese, because its value is not significant in relation to the Grade B product. The petitioners' conclusion that the total value of Grade C silicomanganese sales revenue during the POI was significant compared to the total value of Grade B silicomanganese sales revenue during the POI is not accurate. The petitioners fail to take into account that the sales revenue data used in their analysis reflects the disproportionate production and sales quantities of Grade B silicomanganese and silicomanganese slag during the POI. That is, a significant amount of silicomanganese slag which was used to produce the Grade C product sold during the POI was generated from slag produced in prior years. Petitioners' analysis also fails to take into account the additional costs incurred to recover the Grade C material from the slag. These additional costs should be deducted from the gross revenues received for the sales of Grade C silicomanganese to perform a net realizable value comparison. After these adjustments, the net realizable value of silicomanganese slag produced during the POI is insignificant when compared to the net realizable value of all products produced during the POI. *See, e.g., Final Determination of SLTFV Polythylene Terephthalate Film, Sheet and Strip From the Republic of Korea*, 56 FR 16305, 16316 (April 22, 1991), concerning the accounting of recycled scrap film. Accordingly, no allocation of costs is appropriate.

Comment 10: The petitioners assert that the Department should calculate

depreciation expense on the restated value of Hevensa's fixed assets. The petitioners state that although Hevensa's use of historical cost based depreciation in its submissions to the Department is consistent with Venezuelan Generally Accepted Accounting Principles (GAAP), the resulting depreciation expense is distorted by the high level of inflation in Venezuela during the POI.

Although Hevensa revalued its assets in its financial statements for the fiscal year ending October 31, 1993, Hevensa argues that Venezuelan GAAP did not permit this revaluation of assets. Hevensa further states that because its calculation of depreciation expense on the basis of the historical value of its fixed assets for its submissions to the Department is in accordance with the home-market country's GAAP, it should be accepted by the Department.

DOC Position: We agree with the petitioners that the depreciation expense should be based on the restated value of Hevensa's fixed assets. Normally, the Department does calculate costs in accordance with the GAAP of the home market country (*see NTN Bearing Corp. of America v. V-State*, 826 F. Supp. 1435, 144–42 (CIT 1993). However, the Department will not use a country's GAAP if it does not accurately recognize a company's actual costs or distorts those costs (*see Id.*). This case is unusual because the accounting authorities in the home market country itself changed their position on the restatement of fixed assets, allowing it for fiscal years beginning after October 31, 1993, after having not approved it in prior years. This decision to revise Venezuelan GAAP was made on the basis of an on-going analysis of the impact of economic conditions on the reporting of financial data.

Depreciation enables companies to spread large expenditures on purchases of machinery and equipment over the expected useful lives of these assets. Not adjusting for the devaluation of currency due to high inflation results in the depreciation deferred to future years being understated in constant currency terms, and, therefore, distorts the Department's COP and CV calculations.

For these reasons, we have adjusted Hevensa's depreciation expense to reflect amounts based on the restated value of Hevensa's fixed assets.

Comment 11: The petitioners assert that the Department should not deduct Hevensa's net exchange gain on financial assets and liabilities nor its net exchange gain on client accounts in its calculation of Hevensa's interest expense. The petitioners argue that because the net exchange gains on financial assets and liabilities are not related to the production of silicomanganese, the Department should not offset Hevensa's interest expense with these gains. With respect to exchange gains and losses on accounts receivable, the petitioners argue that Department policy does not permit such items to be used as an offset to interest expense.

Hevensa argues that its net exchange gain on financial assets and liabilities should be treated in a manner similar to interest income on short-term financial assets. The respondent also states that the exchange gain or loss relates to a foreign deposit in which the total return is equal to the sum of the interest to be paid and the exchange gains and losses.

DOC Position: We agree with the petitioners, in part. It is Department practice not to include exchange gains and losses on client accounts receivable because the exchange rate we use to convert third-country sales to U.S. dollars is that in effect on the date of the U.S. sale. (*See* 19 CFR 353.60.) Accordingly, we have disallowed Hevensa's claimed foreign exchange gains on client accounts receivable.

It is Department practice to include foreign exchange gains and losses on financial assets and liabilities in our COP and CV calculations where they are related to the company's production of the subject merchandise. Financial assets and liabilities are directly related to a company's need to borrow money, and we include the cost of borrowing in our COP and CV calculations. Therefore, we disagree with the petitioners and have included foreign exchange gains and losses on financial assets and liabilities in COP and CV.

Comment 12: The petitioners assert that late payment penalties paid to suppliers and net exchange losses on purchases from suppliers should be reclassified as costs of manufacturing. The petitioners cite prior Department policy in which all costs directly associated with the purchasing of materials were included in material costs.

Hevensa argues that because money is fungible, late payment penalties and net exchange losses on purchases from suppliers should be classified as a general expense, not as a cost of manufacturing. Hevensa notes that by borrowing working capital from its suppliers (by delaying its payments), it freed up its remaining cash to be used in other operations, and thus borrowing from these suppliers helped finance Hevensa's overall operations.

DOC Position: We agree with the petitioners, in part. Foreign exchange gains and losses on the purchase of raw materials used in production of subject merchandise relate directly to the acquisition of the input materials and should be included in the cost of manufacture. Late payment penalties, which represent interest charges for late payment to suppliers, are directly related to management's decision on the usage of capital. Because the Department considers the cost of acquiring capital to be fungible, we believe these late payment penalties are classified appropriately as interest expense.

Comment 13: The petitioners assert that Hevensa misallocated the cost of silicomanganese fines and manganese ore used in the production of Grade B lump silicomanganese. Hevensa divided the total costs of fines and manganese ore for the month by the total volume of Grade B lump and fines produced during the same month to obtain a monthly cost of fines and ore per unit of silicomanganese produced. Petitioners also assert that because Hevensa reported no sales of Grade B fines during the POI, Hevensa should have allocated the fines and ore cost only over the volume of Grade B lump and silicomanganese slag produced.

Hevensa contends that it properly allocated cost to the Grade B silicomanganese fines produced, even though none were sold during the POI. The costs assigned to the fines are included in the inventory value of the fines, and then included in the submitted costs of manufacture when the fines are used in production. If no cost is assigned to fines generated during production, then no cost for fines used in production should be included in the submitted cost of manufacturing.

DOC Position: We disagree with the petitioners. Hevensa did not misallocate the cost of silicomanganese fines and manganese ore. The costs assigned to the silicomanganese Grade B fines generated in the production process are the same costs assigned to silicomanganese Grade B fines reintroduced into the furnace. In our view, this methodology does not distort costs. Accordingly, no adjustment is necessary.

Comment 14: The petitioners argue that Hevensa should include VAT on raw materials as part of its production costs for months that were subject to VAT. To exclude VAT on cost of materials from COP and CV would be contrary to Department practice.

Hevensa argues that if the Department includes the value added taxes paid on inputs in the cost of production, it must also include the VAT received from its customers in the price for purposes of the sales below cost test.

DOC Position: We agree with the respondent. The amount of VAT included in the home market COP should be the same as the amount that is included in the home market sales prices. For CV and third-country sales, no VAT on raw materials should be included. If the VAT is rebated by the government upon export, no VAT is added to CV on third country sales price in any event, pursuant to Section 773(e)(1)(a).

Comment 15: Hevensa argues that the Department should perform the sales below cost test by comparing the sales price to a monthly weighted-average COP. It asserts that comparing sales prices at the beginning of the POI to a weighted-average COP for the POI would be distortive, given the high rate of inflation experienced in Venezuela during the POI.

The petitioners argue that Hevensa's proposed comparison of monthly COPs, calculated on a historical cost basis, to monthly selling prices would be contrary to Department practice and highly distorted. Petitioners assert that as a consequence of the erosion of the value of the Venezuelan currency between the date the inputs were purchased and the date of shipment of the silicomanganese produced using inventoried inputs, Hevensa's proposed methodology understates Hevensa's production costs.

DOC Position: Department practice is to compute a single POI weighted-average cost of production for each different model or product of subject merchandise. Monthly COPs are computed in situations where the country under investigation is experiencing "hyperinflation." When a country is experiencing hyperinflation, we require respondents to report monthly COPs using the replacement cost methodology. In this investigation, the Department determined that the Venezuelan economy was not experiencing hyperinflation during the POI. Indeed, this was the position taken by Hevensa during the investigation. As a consequence, Hevensa submitted its historical costs rather than the replacement costs required by the Department's hyperinflation methodology. Accordingly, monthly weighted average COPs were not used in the calculations for the final determination.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of silicomanganese from Venezuela that are entered, or withdrawn from warehouse, for consumption on or after June 17, 1993, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer exporter	Weighted-average margin
Hevensa	8.81
All others	8.81

ITC Notification

In accordance with section 735(d) of the Act, we have notified the U.S. International Trade Commission (ITC) of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threatening material injury to the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-27547 Filed 11-4-94; 8:45 am]

BILLING CODE 3510-DS-P

[A-405-071]

Viscose Rayon Staple Fiber From Finland; Termination of Administrative Review and Revocation of Antidumping Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of Administrative Review and Revocation of Antidumping Finding.

SUMMARY: In accordance with the decision of the United States Court of International Trade (the Court), in *Kemira Fibres Oy* v. *United States*, 18 CIT_____, Slip Op. 94-139 (September 8, 1994), the Department of Commerce (the Department) is now revoking the antidumping finding on viscose rayon staple fiber (the fiber) from Finland, terminating the 1993-94 antidumping duty administrative review of the finding, and ending the suspension of liquidation of entries of all imports of the fiber. The Department is taking these actions, rather than suspend liquidation of the subject merchandise during the pendency of appeal, because the instant decision was issued pursuant to 28 U.S.C. 1581(i), the Court's residual jurisdictional authority, rather than pursuant to 19 U.S.C. 1516a, the Court's general jurisdictional authority.

EFFECTIVE DATE: November 7, 1994.

FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-5831/4114.

SUPPLEMENTARY INFORMATION:

Background

On March 21, 1979, the United States Treasury Department published in the **Federal Register** the antidumping finding on the fiber from Finland (44 FR 17156). The Department conducted administrative reviews of the fiber until 1988. However, no reviews of the fiber were conducted for the next five consecutive years (*i.e.*, for the period March 1988 through February 1993) because no interested party requested an administrative review.

On June 3, 1993, the Department published in the **Federal Register** a notice of intent to revoke the finding. See Rayon Staple Fiber from Finland; Intent to Revoke Antidumping Finding (58 FR 31504). On June 28, 1993, two U.S. domestic producers of the fiber objected to the proposed revocation

within the time specified in the foregoing **Federal Register** notice.

On March 4, 1994, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" for the period March 1, 1993 through February 28, 1994 (59 FR 10368). On March 29, 1994, two domestic producers requested that the Department conduct an administrative review of Kemira Fibres Oy (Kemira).

On July 13, 1994, Kemira filed an action to enjoin the Department from conducting the review, claiming that the Department was required to revoke the finding as of April 1, 1993, pursuant to 19 CFR 353.25(d)(4)(iii), because the Department did not publish in the **Federal Register** a notice of "Intent to Revoke Finding" by March 1, 1993, the first day of the fifth consecutive anniversary month in which no administrative reviews were requested and no interested party objected to revocation or requested an administrative review by the last day of the fifth consecutive anniversary month.

On September 8, 1994, in the case of *Kemira Fibres Oy* v. *United States*, the Court ruled that the Department was required to revoke the antidumping finding on April 1, 1993. The Court, citing "the language and character" of 19 CFR 353.25(d)(4), concluded that "as no interested party requested an administrative review of the fiber by the last day of the Finding's fifth anniversary month although Commerce solicited requests for administrative review, it was incumbent upon Commerce to conclude that the domestic industry was not interested and to revoke the Order on April 1, 1993. Commerce is now required to: (a) Revoke the Order on the fiber, (b) terminate the administrative review of the fiber for 1993–94, and (c) end the suspension of liquidation of entries of Kemira's imports." *Kemira Fibres Oy* v. *United States*, 18 CIT at_____, Slip Op. 94–139 at 16.

Scope of the Order

Imports covered by the revocation are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). This product is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 5504.10.00 and 5504.90.00. The HTS numbers are provided for convenience and Customs purposes. The written description of the scope of the finding remains dispositive.

Actions Pursuant to Court's Judgment

The Department will instruct the U.S. Customs Service to end the suspension of liquidation of entries of Kemira's imports. The Department will take no further action with respect to any administrative review under section 751(a) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675(a), relating to the fiber from Finland. Finally, the Department hereby revokes the antidumping finding on the fiber from Finland (44 FR 17156, March 21, 1979), revocation being effective April 1, 1993.

This revocation applies to all unliquidated entries of the fiber from Finland entered, or withdrawn from warehouse, for consumption on or after April 1, 1993. The Department will instruct the U.S. Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 1993, without regard to antidumping duties with respect to those entries.

This notice is in accordance with Section 751(c) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675(c), and 19 CFR 353.25(d) (1993).

Dated: October 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27433 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DS–P

University of Missouri-Kansas City, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–085. *Applicant:* University of Missouri-Kansas City, Kansas City, MO 64110. *Instrument:* X-Ray Photoelectron Spectrometer, Model M1201. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* See notice at 59 FR 38585, July 29, 1994. *Reasons:* The foreign instrument provides: (1) electron analyzer efficiency of 3,000 counts per second and (2) most effective and uniform charge neutralization. *Advice Received From:* National Institutes of Health, September 9, 1994.

Docket Number: 94–093. *Applicant:* The University of Georgia, Athens, GA 30602. *Instrument:* Muscle Response System, Model TELEMEG. *Manufacturer:* Bioengineering Technology and Systems, Italy. *Intended Use:* See notice at 59 FR 46963, September 13, 1994. *Reasons:* The foreign instrument provides: (1) compatibility with an ELITE motion analysis system and (2) a 100Hz data collection rate. *Advice Received From:* National Institutes of Health, September 29, 1994.

Docket Number: 94–094. *Applicant:* United States Department of Energy, Washington, DC 20585. *Instrument:* Fuel Cell. *Manufacturer:* Fuji Electric Company, Japan. *Intended Use:* See notice at 59 FR 46964, September 13, 1994. *Reasons:* The foreign instrument provides a liquid-cooled phosphoric acid fuel cell with a net power output of 47.5kW that is suitable for propulsion of a passenger bus prototype. *Advice Received From:* The Jet Propulsion Laboratory, November 10, 1993.

Docket Number: 94–096. *Applicant:* Southern Methodist University, Dallas, TX 75275–0395. *Instrument:* IR Mass Spectrometer System, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 59 FR 48420, September 21, 1994. *Reasons:* The foreign instrument provides: (1) sensitivity to 1,000 molecules of CO_2 per mass 44 ion and (2) an internal precision of 0.005 per mil for 3 bar μl samples of CO_2. *Advice Received From:* National Institutes of Health, September 29, 1994.

The National Institutes of Health and The Jet Propulsion Laboratory advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–27548 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DS–P

[C-351-029]

Certain Castor Oil Products From Brazil: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Raphiel Hampton or Vincent Kane, Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-0176 or 482-2815, respectively.

Preliminary Results

The Department of Commerce is conducting an administrative review of the countervailing duty order of certain castor oil products from Brazil. We preliminarily determine the net subsidy to be 0.03 percent *ad valorem*, which is *de minimis*, for the period January 1, 1992, through December 31, 1992. We invite interested parties to comment on these preliminary results.

Background

Since the publication of the notice of initiation in the **Federal Register** (58 FR 26960, May 6, 1993), the following events have occurred.

On October 13, 1993, we issued a questionnaire to the Brazilian Embassy in Washington, D.C., concerning the subsidy programs under review. We received a response from the Government of Brazil (GOB) on December 29, 1993, on behalf of itself and the respondent's companies. After reviewing the GOB's response, we issued a supplemental questionnaire to the GOB on January 28, 1994. We received a supplemental response from the GOB on February 23, 1994. From March 7 to 18, 1994, we verified the government and companies' responses in Brazil.

Scope of Review

The merchandise subject to this review is hydrogenated castor oil and 12-hydroxystearic acid. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule ("HTS") subheadings: 1516.20.90 and 1519.19.40. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The review covers six companies, the period January 1 through December 31, 1992, and 12 programs: (1) Preferential Export Financing under Resolution 950/1009; (2) Income Tax Exemption for Export Earnings; (3) Preferential Export Financing Under CIC-OPCRE 6-2-6; (4) Preferential Financing for Industrial Enterprises by the Bank of Brazil; (5) Reduction of Industrial Products Tax (IPI) and Import Duties Under Decreto No. 77.065 through BEFIEX; (6) Preferential Financing for National Trading Companies under Resolution 883 of the Banco Central do Brasil; (7) Accelerated Depreciation for Brazilian-Made Capital Goods; (8) Preferential Financing under Resolution 68 through FINEX; (9) Preferential Financing under Resolution 578/83 through FUNPAR; (10) Preferential Financing under Resolution 579/83 through PROEX and PROSIM; (11) Preferential Financing for the Storage of Merchandise Destined for Export under Resolution 330/Portaria 130 of the Banco Central do Brasil; and (12) Green Yellow Drawback (Portaria 68/83).

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in 19 CFR 355.20(d)(1) (53 FR 52325, December 27, 1988). Using this methodology we calculated a country-wide rate of 0.03 percent which is de minimis.

Analysis of Program

(1) Income Tax Exemption for Export Earnings

Under this program, exporters of the subject merchandise were eligible for an exemption from income tax on the portion of their profits attributable to exports. On April 12, 1990, Decree Law 8,034 eliminated this exemption by establishing a 30 percent income tax rate for export profits, which equaled the normal corporate income tax rate. Boley, however, was authorized to use the income tax exemption on export earnings under the terms of a contract with the Commission for the Granting of Fiscal Benefits to Special Export Programs (BEFIEX) until its contract expired. Therefore, despite the fact that the income tax exemption for export earnings was eliminated, Boley received residual benefits from the program during the review period. No other company under review used this program.

To calculate the income tax savings realized by Boley during the review period, we multiplied the income tax deduction taken by the firm under this program by 30 percent, the corporate income tax rate during the review period. We then used the amount of Boley's income tax savings to calculate a country-wide rate. We calculated the country-wide rate by dividing the total income tax savings realized by Boley by the total exports of all products by all of the companies under review. On this basis, we calculated a subsidy rate of 0.03 percent *ad valorem*, which is *de minimis*.

Programs Preliminarily Found To Be Terminated

We examined the following programs and preliminarily determine these programs to be terminated. Further, we verified that the respondents did not receive any residual benefits under them during the period of review.

a. Preferential Export Financing Under Resolution 950/1009 Through CACEX (Carteira de Comercio Exterior) of the Bank of Brazil

We verified that this program was terminated on August 30, 1990, by Banco Central Bank do Brasil Resolution No. 1,744. See, also, Final Affirmative Countervailing Duty Determination: Silicon Metal from Brazil, June 12, 1991 (56 FR 26988).

b. Preferential Export Financing Under CIC-OPCRE 6-2-6

We verified that on May 10, 1990, the functions of CACEX of the Bank of Brazil, which administered these export financing loans, were absorbed by the Secretariat of Foreign Trade (SECEX). SECEX was not empowered to perform banking operations and the export financing was discontinued. See, also, Certain Round-Shaped Agricultural Tillage Tools from Brazil; Preliminary Results of Countervailing Duty Administrative Review, March 31, 1992 (57 FR 10885) (Tillage Tools).

c. Reduction of Industrial Products Tax (IPI) and Import Duties Under Decreto No. 77.065 Through BEFIEX (Comissao par a Concessao de Beneficios a Programas Especials de Exportacao) and CIEX (Comissao para Incentivos a Exportacao)

We verified that on April 12, 1990, Decree Law 8,032 limited this program exclusively to imports made by the federal, state, and municipal governments, territories, and other political entities, and scientific institutions, thereby eliminating the benefit to commerical enterprises. See, also, Tillage Tools.

d. Preferential Financing for National Trading Companies Under Resolution 883 of the Banco Central do Brasil

We verified that Banco Central do Brasil Resolution 1,744 revoked

Resolution 883 on August 30, 1990, thereby terminating this program. See, also, Tillage Tools.

e. Preferential Financing Under Resolution 68 Through FINEX

We verified that this program was terminated on April 5, 1988, by Article 4 of Brazil's new constitution, which provided that all programs requiring funding from the national treasury had to be reenacted within a two-year period or cease to exist. Legislation to reenact preferential financing through FINEX was not passed and the program ceased to exist.

f. Preferential Financing Under Resolution 579/83 Through PROEX and PROSIM

We verified that preferential financing through PROSIM was terminated on February 4, 1985, by BNDES Resolution 607, and that preferential financing through PROEX was terminated in 1991 by BNDES Resolution 762.

g. Preferential Financing for the Storage of Merchandise Destined for Export Under Resolution 330/Portaria 130 of the Banco Central do Brasil

We verified that this program was terminated on August 21, 1984, by Central Bank Resolution 950.

Programs Preliminarily Found To Be Not Used

We also examined the following programs and preliminarily determine that the respondents did not use them during the review period:

a. Preferential Financing for Industrial Enterprises by the Bank of Brazil

b. Preferential Financing Under Resolution 578/83 Through FUNPAR

c. Accelerated Depreciation for Brazilian Made Capital Goods

d. Green Yellow Drawback (Portaria 68/83)

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.03 percent, which is de minimis, for the period January 1, 1992 through December 31, 1992.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the Customs Service not to assess countervailing duties on shipments of the subject merchandise from all companies, exported on or after January 1, 1992 and on or before December 31, 1992. Further, as provided by section 751(a)(1) of the Act, the Department will instruct Customs not to collect cash deposits on shipments of this merchandise from all companies entered or withdrawn from warehouse for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than ten days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to agruments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Requests for a hearing should be made within ten days of the publication of these preliminary results. Any hearing, if requested, will be held within seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e) of the Department's regulations. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: September 28, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–21549 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Notice of Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel meeting in the areas of management and organization, budget status, strategic and tactical issues, law and policy, new technology and research, economic development, outreach for enhancement of Department of Commerce goals, and new business.

DATES: The announced meeting is scheduled during 2 days: Thursday, November 17, 1994, 8:00 a.m. to 5:00 p.m. and Friday, November 18, 1994, 8:00 a.m. to 3:30 p.m.

ADDRESSES: Holiday Inn—Silver Spring 8777 Georgia Avenue Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. David B. Duane, Director, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 1315 East-West Highway, Room 11618, Silver Spring, Maryland 20910, (301) 713–2448.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Thursday, November 17, 1994, 8:00 a.m.–5:30 p.m.

8:00 Opening Remarks
8:15 Logistics
8:30 OSB/NRC Report
9:15 Legislative Activities
9:45 BREAK
10:00 Panel Position Papers
1. Potential Changes to Sea Grant Legislation
2. Response to OSB Critique of Panel Role and Responsibility of Panel Panel Review of National Office
12:15 Working Lunch
1:15 Small Business Innovation Research
2:15 National Sea Grant Office Report
- Regionalization
- Multiple Entities
- Performance Criteria
- Economic Impact Publication
- SG Making a Difference
- Poster
- Industrial Fellows
- Aquaculture

3:45 National Media Communicator Report
4:15 Council of Sea Grant Directors Report
5:00 Adjourn

Friday, November 18, 1994

8:00 Biennium Reports

9:00 Evaluation of Grants & Proposals
9:45 BREAK
10:00 Positioning Sea Grant for the 21st Century
- Business/International Environment
- Technical/Scientific Environment

10:30 Two Imaginative Visions
- Ocean Thermal Energy Conversion
- Autonomous Underwater Vehicles

11:30 Review of Vision and Strategic Plan
12:00 Working Lunch
1:00 Long Range Planning Committee Report
1:30 Management for Achievement
- Office of Ocean & Earth Sciences, NOS NOAA/SG Interface Improvement

2:20 Business and Economic Development
2:40 1994 Review Panel Accomplishments
3:00 Changing of the Guard
3:10 Election of Vice Chair
- New Business
- Date of Next Meeting

3:30 Adjourn

The meeting will be open to the public.

Dated: November 1, 1994.

Ned A. Ostenso,

Assistant Administrator for Oceanic and Atmospheric Research.

[FR Doc. 94-27469 Filed 11-4-94; 8:45 am]

BILLING CODE 3510-08-P

[I.D. 102794A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit No. 873 (P772#63).

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038-0271, has requested a modification to Permit No. 873.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, (310/980-4016).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit No. 873, issued on July 28, 1993 (58 FR 34038) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222). Permit No. 873 authorizes the Permit Holder to biopsy several species of bow-riding cetaceans off the coasts of Washington, Oregon, California, and Mexico, and to import biopsy tissues collected outside of U.S. waters. The Permit Holder requests authorization to add two additional species to the permit authority, (hourglass dolphin, *Lagenorhynchus cruciger*, and Southern right whale dolphin, *Lissodelphis peronii*), to import biopsy tissues from these additional species, to expand the study area to include the Southern Ocean, and to extend the effective date of the permit through December 31, 1997.

Dated: October 31, 1994.

Patricia Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-27528 Filed 11-4-94; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 314, 340, 440, 440-M (sublimit), 617, 634 and 636 are being increased, variously, for carryforward, swing and carryover. As a result, the limits for Categories 314, 340, 617, 634 and 636, and sublimit 440-M, which are currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 3847, published on January 27, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 8, 1994, you are directed to amend further the directive dated January 24, 1994 to increase the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
314	48,873,541 square meters.
340	868,813 dozen of which not more than 434,406 shall be in Category 340–Z [2].
440	39,729 dozen of which not more than 22,702 dozen shall be in Category 440–M [3].
617	16,749,517 square meters.
634	604,152 dozen.
636	556,625 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[3] Category 440–M: HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6295.90.4020 and 6211.31.0030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27554 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber and Silk-blend and Other Non-Cotton Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 3847, published on January 27, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 2, 1994, you are directed to amend further the directive dated January 24, 1994 to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	648,992 kilograms.
218	11,087,152 square meters.
219	2,189,447 square meters.
237	1,693,600 dozen.
300/301	3,664,235 kilograms.
331	4,955,245 dozen pairs.
333	87,221 dozen.
341	651,920 dozen of which not more than 385,749 shall be in Category 341–Y [2].
342	256,196 dozen.
345	134,136 dozen.
351	495,835 dozen.
359–C [3]	569,748 kilograms.
360	6,764,306 numbers of which not more than 4,844,606 numbers shall be in Category 360–P [4].
369–H [5]	4,493,006 kilograms.
369–L [6]	2,952,449 kilograms.
410	1,958,533 square meters of which not more than 1,569,975 square meters shall be in Category 410–A [7] and not more than 1,569,975 square meters shall be in Category 410–B [8].
433	23,048 dozen.
434	13,777 dozen.
436	15,891 dozen.
438	27,551 dozen.
442	41,810 dozen.
444	210,655 numbers.
445/446	306,474 dozen.
447	80,357 dozen.
448	22,589 dozen.
607	360,955 kilograms.
631	1,203,625 dozen pairs.
638/639	2,504,056 dozen.
641	1,306,759 dozen.
642	314,758 dozen.
643	508,623 numbers.
645/646	882,227 dozen.
650	109,052 dozen.
652	2,227,631 dozen.
659–C [9]	382,228 kilograms.
659–H [10]	2,694,988 kilograms.
659–S [11]	563,376 kilograms.
670–L [12]	15,496,354 kilograms.
833	25,077 dozen.
842	250,768 dozen.
846	165,545 dozen.
Level not in a group	
369–S [13]	619,880 kilograms.
863–S [14]	8,617,258 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[4] Category 360–P: only HTS numbers 6302.21.1010, 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

[5] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[6] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

[7] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[8] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[9] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[11] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[12] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[13] Category 369–S: only HTS number 6307.10.2005.

[14] Category 863–S: only HTS number 6307.10.2015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27551 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Lesotho

November 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 482–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338–B/339–B/638–B/639–B is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 61679, published on November 22, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 16, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Lesotho and exported during the twelve-month period which began on December 1, 1993 and extends through November 30, 1994.

Effective on November 8, 1994, you are directed to amend the directive dated November 16, 1993 to increase the limit for Categories 338–B/339–B/638–B/639–B[1] to 853,278 dozen[2], as provided under the terms of the current bilateral agreement between the Governments of the United States and the Kingdom of Lesotho.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27552 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

November 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

[1] Category 338–B: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2065, 6110.90.0068, and 6114.20.0005; Category 339–B: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2075, 6110.90.0070, 6114.20.0010 and 6117.90.0022; Category 638–B: only HTS numbers 6103.23.0075, 6103.29.1050, 6105.20.2010, 6105.20.2030, 6105.90.3030, 6109.90.1049, 6110.30.1050, 6110.30.2050, 6110.30.3050, 6110.90.0076 and 6114.30.1010; Category 639–B: only HTS numbers 6104.23.0036, 6104.29.1050, 6104.29.2055, 6106.20.2010, 6106.20.2030, 6106.90.2030, 6106.90.3030, 6109.90.1090, 6110.30.1060, 6110.30.2060, 6110.30.3055, 6110.90.0078, 6114.30.1020 and 6117.90.0026.

[2] The limit has not been adjusted to account for any imports exported after November 30, 1993.

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65580, published on December 15, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 8, 1994, you are directed to amend the directive dated December 9, 1993, to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated August 26, 1992 between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
Other specific limits	
300/301	2,284,405 kilograms.
336/636	348,609 dozen.
340/640	1,099,551 dozen.
341/641	1,221,356 dozen.
347/348	430,474 dozen.
351/651	223,289 dozen.
645/646	275,263 dozen.
647/648	1,298,657 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-27553 Filed 11-4-94; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

Product Identification; Notice of Inquiry; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission frequently warns the public about unsafe products or works with industry to conduct recalls or other corrective actions on such products that are in the hands of consumers. However, these products can be difficult for the Commission and consumers to identify because they often lack markings that specify the name and address of the manufacturer or importer.

To address this problem, the Commission is considering requiring firms to put identifying information on their products. The Commission will also consider alternative ways to address the problem. Therefore, the Commission is issuing this notice of inquiry to solicit comments from industry, consumers and all other interested parties. The Commission is particularly interested in receiving specific information on the expected economic effects of this proposal.

After evaluating all comments received and all information available, the Commission will decide whether to propose for additional public comment a product identification rule.

DATES: Written comments in response to this notice of inquiry must be received by the Commission no later than January 6, 1995.

ADDRESSES: Comments, preferably in five (5) copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001 or delivered to room 502, 4330 East West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Alan Shakin, Office of the General Counsel, Room 700, at the above address; telephone 301-504-0980.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission has the authority to order firms to repair, replace or refund the purchase price of unsafe consumer products, *see* 15 U.S.C. 1274(b) and 2064(d), and to give public notice of the hazards. 15 U.S.C. 1274(a) and 2064(c). In addition, the Commission frequently reaches agreements with firms to give public notice and take corrective actions voluntarily to remove unsafe products from the marketplace. In this notice we will refer to the corrective actions of notice and repair, replacement and refund generally as "recalls."

The Commission consistently works to improve the effectiveness of recalls of unsafe consumer products by making more consumers aware of recalls and by encouraging more consumers to respond when they have a recalled product. The most effective recalls occur when consumers can be told that a recall applies to a particular brand and model of a product that was manufactured at a particular time, and when all of this information is displayed on the product.

Sometimes, however, the Commission cannot even seek a recall of an unsafe product because the Commission does not know what firm manufactured, imported or distributed the product to consumers. For example, since 1984 the Commission knows of more than 20 children who choked to death on toys that could not be identified. These toys had no identifying information on them—except perhaps the country of manufacture—and the place of purchase was unknown.

In other cases, the Commission is able to identify the firm that made or imported the product and is able to negotiate a recall. However, the absence of identifying information on the product makes it extremely difficult for consumers to know whether they have the recalled product.

A recent example of this situation is a pacifier that failed to comply with the Commission's safety requirements. The Commission and firm negotiated a recall and attempted to describe the pacifier in a joint press release. However, this pacifier was virtually indistinguishable from many other pacifiers unaffected by the recall, and therefore was difficult to describe meaningfully to consumers. The press release described the affected pacifier as "consist[ing] of a pink, yellow, or blue guard or shield and ring with a rubber nipple."

A similar situation arises when nearly identical products are distributed by different firms, and many brands are recalled. For example, numerous brands of metal tubular bunk beds were recalled earlier this year, but the beds had no identifying marks. Many consumers did not know whether their beds were involved in the recall. And, even if consumers knew that their beds

were recalled, they could not easily determine what firm was responsible for manufacturing particular beds. This problem occurs frequently with a variety of products. The problem of describing recalled products to consumers is compounded because the media often shorten, and may reword, the description contained in the press release announcing a recall.

Even when recalled products are still in the hands of retailers, it can be difficult to identify the products. The manufacturer or importer of a recalled product may not notify its retail customers because it is no longer in business, is unwilling to do a recall or lacks complete records of its customers. In such situations, the Commission publicizes the recall, usually by issuing a press release. When the identifying information provided in the release is on the packaging of the recalled product, retailers can quickly remove the affected product from their shelves.

Finally, the Commission knows from experience that recalls sometimes have to include products that do not present a safety problem because the products are not marked in a way that allows those that present the risk to be distinguished from the same model of products that do not. For example, a quality control problem during a particular week may have caused a defect in only a few thousand toys. If those toys cannot be distinguished from the same toys manufactured during different weeks, they would all require recall. On the other hand, if the defective toys are marked with a code that pinpoints the problem week, the scope of the recall can be limited and its expense reduced. This result may be helpful to industry, consumers and the Commission.

B. Scope

The Commission enforces safety rules for thousands of different consumer products, and products that fail to comply are generally recalled. Even if no specific rule applies to a product, all consumer products are subject to recall if they present a substantial hazard.

Many of the Commission's safety rules and recalls involve children's and fireworks products. Moreover, these products often place at risk children who are less able to protect themselves from unsafe products than are adults. Accordingly, at this time the Commission is considering a product identification rule only for children's and fireworks products.

C. A Possible Product Identification Proposal

This section discusses the specific provisions of a possible product identification proposal. The provisions are all subject to change, particularly if information received from the public during the comment period supports different provisions that would accomplish the Commission's objectives while imposing smaller economic burdens on industry.

1. Marking Provisions

Different types of permanent marking would be acceptable. Industry members would be able to choose the type that is most suitable for the product, and least expensive, so long as the appropriate information is communicated and will remain on the product permanently.

The retail packaging of consumer products already contains a great deal of information and the amount of required information has been kept to a minimum. The name and location of a manufacturing, importing or private labeling firm located in the United States are the most important pieces of identifying information to help the Commission trace a product. (As discussed in section 2(a) below, a code on file with the Commission may be sufficient.) If there is a recall, it is also important to have products identified according to their model and their production run, or according to similar categories that will help pinpoint the particular products that are unsafe. (As discussed in section 2(b) below, this information could also be in code.) This helps limit recalls to just the products that are unsafe.

The size and conspicuousness of the marking are less significant in this type of proposal than they would be in one designed to provide information to consumers at the time of purchase. Here, it would be sufficient if the information can be read without disassembly of the product or magnification.

2. Exceptions

The proposal could include various exceptions to minimize its economic impact:

(a) Firms might prefer to mark products with a code such as a registered trademark or a corporate symbol or logo in place of its name and address. The proposal could permit this if the firm notifies the Commission and waits ten working days after receipt of the notification for the Commission to object. An objection would be made, for example, if some other firm was already using the same or a too similar code.

(b) The model and date of production information could be provided in code, as well. If the Commission needed to know that information, it would obtain the code or the information from the firm.

(c) Because consumer products vary greatly in size and material, the Commission recognizes that it may be impracticable to permanently mark some limited number of products. The proposal would therefore give firms some leeway in complying. As examples, it is impracticable to mark modeling clay because of its texture, and it is probably impracticable to mark small glass marbles. However, the containers of any products that qualify for an exception might have to be permanently marked or printed with the same identifying information. While containers may be discarded or lost, this provision is intended to afford a reasonable alternative for products which cannot practicably be permanently marked.

(d) Products consisting of more than one piece, such as a set or collection, may not have to be permanently marked on every piece. The largest piece might have to be so marked—as well as any container that comes with the product. For example, the board in a board game (assuming it is the largest piece) and the box would be marked, but not the dice, markers or other pieces in the game. If all pieces in a set or collection are essentially the same size, they might all have to be permanently marked. In addition, if many pieces would fall into the category of "the largest," all of those pieces might have to be marked. While requiring every piece in a set or collection to be permanently marked would be preferable from a safety standpoint, such a broad provision might be unduly burdensome.

3. Effective Date

The Commission solicits all available relevant information on an appropriate effective date, including industry cycling schedules for replacing capital equipment.

4. Text of Possible Provisions

To obtain specific public comments and specific information, the Commission is providing the text of the possible product identification provisions that it is considering. Again, the Commission emphasizes its willingness to consider alternative approaches for accomplishing its objectives.

The text of the possible provisions is:

Purpose

If an unsafe product is found with no identifying information on it, the Commission may be unable to determine its manufacturer, private labeler or importer. Corrective action may therefore not occur, and consumers will remain at risk. One purpose of this proposal is to assure that the Commission will be able to identify the firms responsible for all unsafe products, and be able to pursue corrective actions.

When firms do take corrective actions, such as warning the public and recalling unsafe products, the lack of inadequacy of identifying information may prevent consumers from knowing whether they have the product in question. Many products look the same or similar, and their markings may be the only practicable way to identify them. A second purpose of this proposal is to assure that consumers will be able to identify products that are the subject of warnings and recalls.

If a product has been coded by date and/or production run, the scope of any recall of that product can be limited and its cost reduced. A third purpose of this proposal is to achieve this result.

Scope

This proposal applies to every children's product and fireworks product that is first introduced into interstate commerce on or after its effective date.

Definitions

"Children's product" means "any toy or other article intended for use by children," as the phrase is used in the Federal Hazardous Substances Act at 15 U.S.C. 1261(f)(1)(D) and (q)(1)(A).

"Fireworks product" means all fireworks products that are subject to the requirements at 16 CFR 1500.14(b)(7); 1500.17(a) (3), (8) and (9); or Part 1507.

"Manufacturer" means any person who manufactures, produces, assembles or imports a children's product.

"Private labeler" means an owner of a brand or trademark on the label of a children's product which bears a private label, as the term "bears a private label" is defined in the Consumer Product Safety Act at 15 U.S.C. 2052(a)(7)(B).

"U.S. firm" means a business entity that is incorporated in a state or territory of the United States or that has officers or employees who work full-time in a state or territory within the United States and who have authority to speak for the firm on matters related to product recalls.

"Permanently marked" means paint-stenciled, die-stamped, molded, indelibly stamped or otherwise permanently affixed, fastened or attached to a product by means of a tag, token or other suitable method, including securely sewn on, so that the marking cannot be readily removed or obliterated during normal use or reasonably foreseeable damage, abuse or misuse of the product.

"Set or collection" means a product that consists of varied items which are intrinsically complementary to its function, purpose or use. Examples of sets or collections include jigsaw puzzles, bags of marbles, boxes of crayons or colored pencils, building sets and board games.

Marking Provisions

Every children's product and fireworks product shall be permanently marked to indicate: the name of the U.S. firm that is the manufacturer or private labeler of the product; the location or business address in the United States, including the city, state and zip code, of the U.S. firm; a number (such as a model number or stock number) or symbol that identifies the product and distinguishes it from all other products which are not of identical construction, composition and dimensions; and a date or number or symbol that identifies the production run or date of manufacture of the product. The packaging of every product shall also be marked or printed with the same information.

The information described above must be in letters and numbers that are at least one-sixteenth inch high and must be able to be read without any disassembly of the product.

Exceptions

A U.S. firm that would be identified on a product may notify the Commission's Office of the Secretary that it intends to use a registered trademark, a corporate symbol or some other unique code instead of the firm's name and address. If the Commission does not object within ten working days after receiving such notification on grounds that the chosen code would not adequately distinguished the firm from another company, the firm nay use that code.

The model and production run information may also be coded if the code and/or the uncoded information is available to any Consumer Product Safety Commission representative immediately upon request at the specified address.

If it is physically or technologically impracticable to permanently mark a children's product or fireworks product, the required information shall be permanently marked or printed on (1) the immediate container of the product, (2) any container sold with and intended to be used with the product, and (3) any container sold with and intended to be used for storage of the product after purchase.

If a children's product or fireworks product is as set or collection, only the largest component must be permanently marked. If all of the components are the same size, or if multiple components are "the largest," all such components must be marked. Unless every component of a set or collection is marked, the containers of the product must also be marked.

All comments on this notice of inquiry should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to that office at Room 502, 4330 East West Highway, Bethesda, Maryland 20814, and received no later than January 6, 1994.

Dated: November 1, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–27416 Filed 11–4–94; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; Notice to Delete and Amend Systems of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete and amend systems of records.

SUMMARY: The Department of the Air Force proposes to delete three and amend seven systems of records in its inventory of record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletions will be effective November 7, 1994.

The amendments will be effective December 7, 1994, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, SAF/AAIQ, 1610 Air Force Pentagon, Washington, DC 20330–1610.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Gibson at (703) 697–3491 or DSN 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force Privacy systems of records notices have been published in the **Federal Register** and are available from the address above.

The deleted and amended systems are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific changes to the systems of records being amended are set forth below, followed by the systems of records notices published in their entirety, as amended.

Dated: October 25, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS:

F011 PACAF A

SYSTEM NAME:

General and Colonel Personnel Data Action Records *(February 22, 1993, 58 FR 10294).*

Reason: System is no longer needed. There are no plans to reinstate this system in the future. Records maintained in this system have been destroyed.

F035 AFCC A

SYSTEM NAME:

Scope Leader Program *(February 22, 1993, 58 FR 10338).*

Reason: System is no longer needed. There are no plans to reinstate this system in the future. Records maintained in this system have been destroyed.

F176 AFCC A

SYSTEM NAME:

Individual Earning Data *(February 22, 1993, 58 FR 10476).*

Reason: System is no longer needed. There are no plans to reinstate this system in the future. Records maintained in this system have been destroyed.

AMENDMENTS:

F030 AF JA A

SYSTEM NAME:

Confidential Statement of Affiliations and Financial Interests *(February 22, 1993, 58 FR 10298).*

CHANGES:

* * * * *

SYSTEM NAME:

Change system name to 'Confidential Financial Disclosure Report.'

SYSTEM LOCATION:

Delete entry and replace with 'Office of the General Counsel, Office of the Secretary of the Air Force, 1740 Air Force Pentagon, Washington, DC 20330–1740;

Office of The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420; and

Headquarters of major commands and at all levels down to and including Air Force installations, and unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Change first part of entry to read 'Air Force civilian personnel paid at a level of GS–15 or below; Air Force military personnel in the rank of Colonel or below whose basic...'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.); E.O. 12674, Principles of Ethical Conduct for Government Officers and Employees, and 5 CFR part 2634.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Retained for six years after which they shall be destroyed, unless needed in an ongoing investigation. Those records retained for an ongoing investigation will be destroyed when no longer needed in the investigation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'The Assistant General Counsel for Civilian Personnel and Fiscal Law, Office of the General Counsel, Office of the Secretary of the Air Force, 1740 Air Force Pentagon, Washington, DC 20330–174; and

The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420.'

* * * * *

F030 AF JA A

SYSTEM NAME:

Confidential Financial Disclosure Report.

SYSTEM LOCATION:

Office of the General Counsel, Office of the Secretary of the Air Force, 1740 Air Force Pentagon, Washington, DC 20330–1740;

Office of The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420; and

Headquarters of major commands and at all levels down to and including Air Force installations, and unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force civilian personnel paid at a level of GS–15 or below; Air Force military personnel in the rank of Colonel or below whose basic duties and responsibilities require the exercise of judgment on Government decision making or taking action on (1) the administering or monitoring of grants or subsidies, (2) contracting or procurement, (3) auditing, or (4) any other government activity in which the final decision or action has a significant economic impact on the interest of any non-federal enterprise; and special Government employees who are 'advisors' or 'consultants.' Army, Navy, Air Force, and Marine Corps active duty personnel and civilian employees in the same categories when assigned to headquarters of unified and specified commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the title of the individual's position, date of appointment in present position, agency and major organization segment of the position, employment and financial interests, creditors, interest in real property, a list of persons from whom information can be obtained concerning the individual's financial situation, supervisor's evaluation, and Standards of Conduct Counsellor/ Deputy Counsellor review.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.); E.O. 12674, Principles of Ethical Conduct for Government Officers and Employees, and 5 CFR part 2634.

PURPOSE(S):

The review of the statements by the individual's supervisor and deputy counselor to determine the existence of or potential for a conflict of interest in the performance of official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained for six years after which they shall be destroyed, unless needed in an ongoing investigation. Those records retained for an ongoing investigation will be destroyed when no longer needed in the investigation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant General Counsel for Civilian Personnel and Fiscal Law, Office of the General Counsel, Office of the Secretary of the Air Force, 1740 Air Force Pentagon, Washington, DC 20330–1740; and

The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the system manager or Deputy Standards of Conduct Counsellor at any system location.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the system manager or Deputy Standards of Conduct Counsellor at any system location.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual or from personnel designated by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AF MP L

SYSTEM NAME:

Unfavorable Information File (UIF) *(November 23, 1993, 58 FR 61870).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Complete Unfavorable Information Files (UIF) are maintained in the Unit Orderly Room or the Military Personnel Flight (MPF). A copy of the UIF summary sheet is maintained at individual's unit of assignment; geographically separated units not collocated with a servicing MPF. For officers only at major command level; for colonel, colonel select, and general officers at the Headquarters Air Force level, and at the gaining unit for individuals selected for reassignment. Official mailing addresses are published as an appendix to the Air Force compilation of record system notices.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 36–2907, Unfavorable Information File Program; and E.O. 9397.'

* * * * *

RETRIEVABILITY:

Add to end of entry 'or Social Security Number.'

* * * * *

RETENTION AND DISPOSAL:

Delete last sentence and insert 'Computer records are destroyed by erasing, deleting or overwriting.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Deputy Chief of Staff/ Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Personnel for whom optional UIFs exist are routinely notified of the existence of a file.

In all cases personnel have had the opportunity or are authorized to rebut the correspondence in the file.

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the servicing Military Personnel Flight or Unit Orderly Room. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system should address written inquiries to the servicing Military Personnel Flight or Unit Orderly Room. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.'

* * * * *

F035 AF MP L

SYSTEM NAME:

Unfavorable Information Files (UIF).

SYSTEM LOCATION:

Complete UIFs are maintained in the Unit Orderly Room or the Military Personnel Flight (MPF). A copy of the UIF summary sheet is maintained at individual's unit of assignment; geographically separated units not collocated with a servicing MPF.

For officers only at major command level; for colonel, colonel select, and general officers at the Headquarters Air Force level, and at the gaining unit for individuals selected for reassignment. Official mailing addresses are published as an appendix to the Air Force compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel who are the subject of an UIF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Derogatory correspondence determined as mandatory for file or as appropriate for file by an individual's commander. Examples include written admonitions or reprimands; court-martial orders; letters of indebtedness, or control roster correspondence and drug/alcohol abuse correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by;

as implemented by Air Force Instruction 36–2907, Unfavorable Information File Program; and E.O. 9397.

PURPOSE(S):

Reviewed by commanders and personnel officials to assure appropriate assignment, promotion and reenlistment considerations prior to effecting such actions. UIFs also provide information necessary to support administrative separation when further rehabilitation efforts would not be considered effective.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets and in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms. Computer records are protected by computer software.

RETENTION AND DISPOSAL:

UIFs are maintained for one year from the effective date of the most recent correspondence, except when the file contains documentation pertaining to Articles 15, Court-Martial or certain civil court convictions, in which case the retention period is two years from the date of that correspondence. Files are automatically destroyed upon separation or retirement, and on an individual basis when the individual's commander so determines. Destroy by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff/Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Personnel for whom optional UIFs exist are routinely notified of the existence of a file. In all cases personnel have had the opportunity or are authorized to rebut the correspondence in the file.

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the servicing Military Personnel Flight or Unit Orderly Room. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the servicing Military Personnel Flight or Unit Orderly Room. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Supervisory reports or censures and documented records of poor performance or conduct.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 HC C

SYSTEM NAME:

Chaplain Personnel Action Folder *(February 22, 1993, 58 FR 10354).*

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'This is a grouping of information for each active duty United States Air Force Chaplain. Items of information in these folders include, but not limited to current official photograph, current career brief, summary of education, officer career objective statement, chaplain services personnel evaluation, copy of chaplain's ecclesiastical endorsement, copy of appointment orders, copy of initial extended active duty orders, copies of assignment action documents, correspondence between the Chaplains and Headquarters USAF/Chief of Chaplains, requests for special personnel actions and dispositions curtailments.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and 10 U.S.C. 8067, Designation: Officers to perform certain professional functions.'

PURPOSE(S):

Delete 'Personnel Division' and insert 'Chaplain Support Element.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address written requests to the Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.'

* * * * *

F035 HC C

SYSTEM NAME:

Chaplain Personnel Action Folder.

SYSTEM LOCATION:

Office of the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty Chaplains.

CATEGORIES OF RECORDS IN THE SYSTEM:

This is a grouping of information for each active duty United States Air Force Chaplain. Items of information in these folders include, but not limited to current official photograph, current career brief, summary of education, officer career objective statement, chaplain services personnel evaluation, copy of chaplain's ecclesiastical endorsement, copy of appointment orders, copy of initial extended active duty orders, copies of assignment action documents, correspondence between the Chaplains and Headquarters USAF/ Chief of Chaplains, requests for special personnel actions and dispositions curtailments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and 10 U.S.C. 8067, Designation: Officers to perform certain professional functions.

PURPOSE(S):

The documents maintained in these folders are utilized by the Resource Manager in Headquarters United States Air Force/Chief of Chaplains, Chaplain Support Element, assignment selection of chaplains. Because of the necessity to insure an equitable denominational spread of chaplains on an installation and to insure the proper placement of specially qualified chaplains, it is necessary to maintain current information on each chaplain.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be disclosed to endorsing agents concerning the qualifications of their chaplains for continued duty as representatives of their denominations.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/ cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system, and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained for 2 years after separation then destroyed by macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member's personnel action requests/ preferences and information retrieved from the Advanced Personnel Data System (ADPS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 HC D

SYSTEM NAME:

Chaplain Applicant Processing Folder *(November 23, 1993, 58 FR 61872).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Forms and information used by the Chaplain Support Element, Headquarters United States Air Force, in processing chaplains to active duty includes information worksheets; letters of recommendation; interview summary sheets; application for appointment as reserve of the Air Force; application for extended active duty with the United States Air Force; drug abuse certificate; statement of personal history; national agency check request; report of medical examination; report of medical history; fingerprint card; checklist for chaplain appointment; ecclesiastical endorsement; certificate of continuance of ecclesiastical endorsement; certificate of seminary graduation and ordination; official transcripts of college education, and personal correspondence between resource manager and applicant regarding status of his application.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Once applicant is accessed, forms are sent to Air Force Military Personnel Center (AFMPC) for entry into the Master Personnel Records Group. Items not needed by AFMPC are destroyed. If applicant does not qualify for appointment, file is destroyed or returned to the applicant. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.'

* * * * *

F035 HC D

SYSTEM NAME:

Chaplain Applicant Processing Folder.

SYSTEM LOCATION:

Office of the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Chaplaincy applicants and Reserve Chaplains applying for active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forms and information used by the Chaplain Support Element, Headquarters United States Air Force, in processing chaplains to active duty includes information worksheets; letters of recommendation; interview summary sheets; application for appointment as reserve of the Air Force; application for extended active duty with the United States Air Force; drug abuse certificate; statement of personal history; national agency check request; report of medical examination; report of medical history; fingerprint card; checklist for chaplain appointment; ecclesiastical endorsement; certificate of continuance of ecclesiastical endorsement; certificate

of seminary graduation and ordination; official transcripts of college education, and personal correspondence between resource manager and applicant regarding status of his application.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8067, Designation: Officers to perform certain professional functions, and 8293, Commissioned officers; chaplains: Original appointment; examination; as implemented by Air Force Instruction 36–2005, Appointment in Commissioned Grades and Designation and Assignment in Professional Categories Reserve of the Air Force and United States Air Force (Temporary).

PURPOSE(S):

The documents maintained in these transitory folders are used by the resource manager in processing chaplain applicants to active duty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/ cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Once applicant is accessed, forms are sent to Air Force Military Personnel Center (AFMPC) for entry into the Master Personnel Records Group. Items not needed by AFMPC are destroyed. If applicant does not qualify for appointment, file is destroyed or returned to the applicant. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's application.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 HC E

SYSTEM NAME:

Assignment Action File *(January 26, 1994, 58 FR 3670).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Forms used by the Chaplain Support Element, Headquarters United States Air Force, for accession and assignments of Chaplains on active duty and other chaplain personnel actions. They also contain information and actions pertaining to individuals in the areas of duty Air Force Specialty Code (AFSC) change requests, tour length change requests, humanitarian reassignments and copies of messages directing such actions.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete 'Chief of Chaplains' and insert 'Chaplain Support Element.'

NOTIFICATION PROCEDURE:

Delete 'Office of the Chief of Chaplains' and insert 'Chaplain Support Element.'

RECORD ACCESS PROCEDURES:

Delete 'Office of the Chief of Chaplains' and insert 'Chaplain Support Element.'

* * * * *

F035 HC E

SYSTEM NAME:

Assignment Action File.

SYSTEM LOCATION:

Office of the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty Chaplains.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forms used by the Chaplain Support Element, Headquarters United States Air Force, for accession and assignments of Chaplains on active duty and other chaplain personnel actions. They also contain information and actions pertaining to individuals in the areas of duty Air Force Specialty Code (AFSC) change requests, tour length change requests, humanitarian reassignments and copies of messages directing such actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and 10 U.S.C. 8067, Designation: Officers to perform certain professional functions, as implemented by Air Force Instruction 36–2110, Officer Assignments.

PURPOSE(S):

Records are used to answer requests for assignment changes, tour length changes, duty AFSC requests, special assignment consideration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/ cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address written inquiries to the Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member's application and information retrieved from the Personnel Data System (PDS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 AFSPACECOM A

SYSTEM NAME:

Space Command Operations Training *(February 22, 1993, 58 FR 10394).*

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with 'Operations flights at all units within Air Force Space Command, and training flights at all operations support squadrons within 20th Air Force. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Air Force Space Command military personnel currently assigned to operational duties with space, spacelift, intercontinental ballistic missile, warning and surveillance systems equipment.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add 'proficiency rating' between the words 'scores and name.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Air Force Space Command Instruction 36–2202, Operations Training and Standardization and Evaluation Programs.'

PURPOSE(S):

Delete entry and replace with 'To develop a record source of operations personnel qualifications, capabilities and historical data for analysis by unit and operations support squadrons to determine individual overall job qualifications. The files will provide a source of data to help ensure weapon system currency and adequacy of future training requirements.'

* * * * *

STORAGE:

Add to end of entry 'in computers and on computer output products.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Manual files are forwarded to gaining unit upon permanent change of station to another Space Command unit. If individual separates or transfers to another USAF major command, the file is returned to the individual. Computer records are deleted from the data base upon individual's departure from unit.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Operations and Operations Training, Testing Standardization and Evaluation, and Configuration Control Division at Headquarters Air Force Space Command.

Operations officers at Air Force Space Command units with a space, spacelift, intercontinental ballistic missile, warning, or surveillance mission.

Operations officers at 20th Air Force operations support squadrons. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Director of Operations and Operations Training, Testing Standardization and Evaluation, and Configuration Control Division at Headquarters Air Force Space Command;

Operations officers at Air Force Space Command units with a space, spacelift, intercontinental ballistic missile, warning, or surveillance mission; or

Operations officers at 20th Air Force operations support squadrons. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests to determine existence of record should include full name, grade and approximate dates individual was assigned to Air Force Space Command, space, warning and surveillance duties after 1 Sep 1983, or intercontinental ballistic missile duties after 1 July 1993

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Director of Operations and Operations Training, Testing Standardization and Evaluation, and Configuration Control Division at Headquarters Air Force Space Command;

Operations officers at Air Force Space Command units with a space, spacelift, intercontinental ballistic missile, warning, or surveillance mission; or

Operations officers at 20th Air Force operations support squadrons. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests to access records should include full name, grade and approximate dates individual was assigned to Air Force Space Command, space, warning and surveillance duties after Sep. 1, 1983, or intercontinental ballistic missile duties after July 1, 1993.'

* * * * *

F050 AFSPACECOM A

SYSTEM NAME:

Space Command Operations Training *(February 22, 1993, 58 FR 10394).*

SYSTEM LOCATION:

Operations flights at all units within Air Force Space Command, and training flights at all operations support squadrons within 20th Air Force. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Space Command military personnel currently assigned to operational duties with space, spacelift, intercontinental ballistic missile, warning and surveillance systems equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to qualifications, training/evaluation accomplishment, staff/crew alphanumeric identifier, type training/evaluation, scores, proficiency rating, name, grade, unit assigned, and dates of training or evaluation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Air Force Space Command Instruction 36–2202, Operations Training and Standardization and Evaluation Programs.

PURPOSE(S):

To develop a record source of operations personnel qualifications, capabilities and historical data for analysis by unit and operations support squadrons to determine individual overall job qualifications. The files will provide a source of data to help ensure weapon system currency and adequacy of future training requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Manual files are forwarded to gaining unit upon permanent change of station to another Space Command unit. If individual separates or transfers to another USAF major command, the file is returned to the individual. Computer records are deleted from the data base upon individual's departure from unit.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Operations and Operations Training, Testing Standardization and Evaluation, and Configuration Control Division at Headquarters Air Force Space Command.

Operations officers at Air Force Space Command units with a space, spacelift, intercontinental ballistic missile, warning, or surveillance mission.

Operations officers at 20th Air Force operations support squadrons. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Director of Operations and Operations Training, Testing Standardization and Evaluation, and Configuration Control Division at Headquarters Air Force Space Command;

Operations officers at Air Force Space Command units with a space, spacelift, intercontinental ballistic missile, warning, or surveillance mission; or

Operations officers at 20th Air Force operations support squadrons. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests to determine existence of record should include full name, grade and approximate dates individual was assigned to Air Force Space Command, space, warning and surveillance duties after Sep. 1, 1983, or intercontinental ballistic missile duties after July 1, 1993.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Director of Operations and Operations Training, Testing Standardization and Evaluation, and Configuration Control Division at Headquarters Air Force Space Command;

Operations officers at Air Force Space Command units with a space, spacelift, intercontinental ballistic missile, warning, or surveillance mission; or

Operations officers at 20th Air Force operations support squadrons. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests to access records should include full name, grade and approximate dates individual was assigned to Air Force Space Command, space, warning and surveillance duties after Sep. 1, 1983, or intercontinental ballistic missile duties after July 1, 1993.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information will be obtained from the individual and from instructors or Standardization Evaluators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F110 AF JA A

SYSTEM NAME:

Legal Assistance Administration *(April 25, 1994, 59 FR 19699).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete '10 U.S.C. 8072' and insert '10 U.S.C. 8037.'

* * * * *

F110 AF JA A

SYSTEM NAME:

Legal Assistance Administration.

SYSTEM LOCATION:

Air Force Legal Services Agency, Legal Assistance Division, 172 Luke Avenue, Washington, DC 20332–5113.

Headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and retired military personnel, and their dependents and Air Force civilian personnel stationed overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security Numbers, and personal letters and documents furnished by person seeking advice and legal assistance record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8037, Judge Advocate General: Appointment and duties; and E.O. 9397.

PURPOSE(S):

Records kept to render proper advice for continuing assistance. Used by attorney and client with attorney-client relationship to assist in personal legal problems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, card files, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms. Computers must be accessed with a password.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Air Force Legal Services Agency, 172 Luke Avenue, Suite 343, Washington, DC 20332–5113.

Legal Assistance Officers at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Air Force Legal Services Agency, Legal Assistance Division, 172 Luke Avenue, Washington, DC 20332–5113; or to

Legal Assistance Officers at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Air Force Legal Services Agency, Legal Assistance Division, 172 Luke Avenue, Washington, DC 20332–5113; or to

Legal Assistance Officers at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information furnished by client.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–27282 Filed 11–04–94; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Intent to Prepare a Draft Programmatic Environmental Impact Statement (DEIS) for the Everglades Construction Project, Palm Beach, Martin, Okeechobee, Hendry, Collier, Broward and Dade Counties, Florida

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, along with the South Florida Water Management District (SFWMD) and certain cooperating agencies, intends to prepare a Draft Programmatic Environmental Impact Statement (DEIS) on the feasibility of implementing the under the State of Florida's Everglades Forever Act of 1994, the Everglades Construction Project in Palm Beach, Martin, Okeechobee, Hendry, Collier, Broward and Dade Counties, Florida.

ADDRESSES: U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida 32232–0019.

FOR FURTHER INFORMATION CONTACT: Mr. William Porter, (903) 232–2259.

SUPPLEMENTARY INFORMATION: a. The Everglades Forever Act of 1994 (Chapter 373.4592, F.S.) requires the SFWMD to obtain authorization for the construction, operation and maintenance of the Everglades Construction Project. The U.S. Army Corps of Engineers participation will include Section 404 permitting activities, NEPA documentation of this project, and participation in the implementation of several components of the project. The project involves the creation of six (6) Stormwater Treatment Areas (STAs) and three (3) Hydroperiod Restoration elements. It also includes changes in the operation of Lake Okeechobee and other features of the Central and Southern Florida Project. The magnitude and duration of the plan is such that the U.S. Army Corps of Engineers determined that a programmatic EIS should be prepared for the entire plan pursuant to Section 404 of the Clean Water Act.

b. Scoping: The scoping process as outlined by the Council on Environmental Quality will be utilized to involve Federal, State, and local agencies; and other interested persons and organizations. A scoping letter will be sent to interested Federal, State, and local agencies requesting their comments and concerns regarding issues they feel should be addressed in the EIS. Interested persons and organizations wishing to participate in

the scoping process should contact the Corps of Engineers at the address above. Significant issues anticipated include concern for; local groundwater recharge, water quality, water supply, recreation, wetlands, fish and wildlife, and land use. Public scoping meetings will be held in the near future, the exact location, dates, and times will be announced in public notices and local newspapers.

c. It is estimated that the DEIS will be available to the public in July 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–27499 Filed 11–4–94; 8:45 am]

BILLING CODE 3710–AJ–M

Update of Abiquiu Reservoir Master Plan and National Environmental Policy Act (NEPA) Compliance

AGENCY: U.S. Army Corps of Engineers, Albuquerque District, DOD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Albuquerque District (COE) is updating the Master Plan for Abiquiu Reservoir in Rio Arriba County, New Mexico. The purpose of the plan is to provide a comprehensive guide for the use and development of the natural and manmade resources at Abiquiu Reservoir. The existing plan was prepared in 1976 and changes that have occurred since have made it necessary to update that plan.

The COE will prepare a Master Plan/NEPA document and initiate the scoping process for this action. Scoping meetings will be scheduled in the December 1994-January 1995 time frame following completion of a resource demand survey/analysis.

ADDRESSES: Commander, U.S. Army Corps of Engineers, Albuquerque District, CEWSWA-CO-O, P.O. Box 1580, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Spurgeon or Mr. Mark Harberg, (505) 766–1970.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–27424 Filed 11–4–94; 8:45 am]

BILLING CODE 3710–KK–M

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Subregional Long-Term Wastewater Project by the City of Santa Rosa in Sonoma County, California

AGENCY: U.S. Army Corps of Engineers, San Francisco District, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers will prepare a Draft Environmental Impact Statement (EIS) for the proposed Santa Rosa Subregional Long-Term Wastewater Project (Project). The purpose of the Project is to provide for effluent disposal from the Subregional Sewerage System wastewater treatment facilities operated by the City of Santa Rosa. The Project would implement a program to dispose of tertiary treated wastewater from system members and customers through the year 2010. The City of Santa Rosa has applied for a Department of Army (DA) permit for authorization to discharge dredged and fill material, and to work in navigable waters of the United States in association with construction of the Project. The DA permit application process, scoping process, and preparation of the Draft EIS will be conducted by the Regulatory Branch of the San Francisco District.

ADDRESSES: U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 211 Main Street, San Francisco, California 94105–1905.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS can be answered by Wade Eakle at the Corps of Engineers (Telephone 415–744–3325, ext. 222).

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Corps of Engineers has received an application for a Department of the Army permit from the City of Santa Rosa to discharge dredged and fill material, and to work in navigable waters of the United States in association with construction of a Subregional Long-Term Wastewater Project. Project implementation could include construction of embankments to create a wastewater storage reservoir; construction of a groundwater infiltration basin; construction of pipelines to distribute reclaimed water; construction of irrigation drainage facilities; and construction of berms of create or restore wetlands.

The Laguna Wastewater Treatment Plant operated by the City of Santa Rosa provides tertiary treatment for approximately 16 million gallons of wastewater per day (mgd) average dry weather flow (ADWF) from the Subregional Sewerage System. This results in an average annual flow of 7,000 million gallons (mg). Wastewater flows are projected to increase to approximately 22.5 mgd ADWF by the year 2010, including consideration for lower flows due to water conservation. This results in an average annual flow of 9,800 mg.

Disposal of treated wastewater from the Laguna plant is through agricultural irrigation, created wetlands, urban irrigation, and discharge to the Russian River through the Laguna de Santa Rosa. Ordinarily, discharge to the Russian River is limited to a maximum of 1 percent of river flow (5 percent with the permission of the California Regional Water Quality Control Board), and storage is provided to hold treated wastewater so that maximum legal discharge is not exceeded. However, due to a combination of conditions which may occur during the October 1–May 14 discharge season, discharge to the Russian River may exceed the legal maximum.

These conditions can occur during winters characterized by periodic light rain but overall drier-than-normal conditions. As a result, the current Subregional System is weather-dependent, leaving it without a reliable, legally sanctioned wastewater disposal option. By 1999 the City of Santa Rosa must put in place a disposal solution to meet future capacity needs, no matter what weather conditions occur. The purpose of the Santa Rosa Subregional Long-Term Wastewater Project is to provide this solution.

The DA permit application will be processed by the Regulatory Branch of the San Francisco District, Corps of Engineers, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) the Corps of Engineers has determined that the proposed action may have a significant impact on the quality of the human environment and therefore requires the preparation of an Environmental Impact Statement. A combined EIS/EIR (Environmental Impact Report) will be prepared with the Corps of Engineers as the Federal lead agency and the City of Santa Rosa as the lead agency for the EIR.

2. Alternatives

The Project alternatives under consideration are:

a. No Project/No Action
b. South County Reclamation
c. Community Separator/South County Reclamation
d. West County Reclamation
e. Geysers Recharge
f. 20% Maximum Russian River Discharge

g. Other project proposals that are identified as feasible during the public scoping process

Components of the alternatives to be analyzed for the Project may include: water conservation through compliance with state regulations and an expanded subregional retrofit program; expanded agricultural irrigation; flow augmentation of existing streams during periods of low flow; increased storage capacity, including new reservoir sites or use of below ground aquifers; expanded urban irrigation reuse; injection and reuse of treated wastewater at the Sonoma Geysers; and increased discharge to the Russian River (up to a maximum of 20 percent of river flow) either directly, through rapid infiltration in the river plain, or through the Laguna de Santa Rosa.

3. Scoping Process

Pursuant to the National Environmental Policy Act, as amended, agency planning for Federal or Federally permitted projects must include a "scoping" process. Scoping primarily involves determining the scope of issues to be addressed, and identifying the significant issues for in-depth analysis in the Draft EIS. The scoping process includes public participation to integrate information regarding public needs and concerns into the environmental document.

The Corps of Engineers and the City of Santa Rosa will hold public scoping meetings on November 17, 1994 at 3 pm and 7 pm at the Steele Lane Recreation Center, 415 Steele Lane, Santa Rosa, California 95403. A formal presentation will precede the request for public comment. Representatives from the Corps of Engineers, the City of Santa Rosa, and Harland Bartholomew & Associates (the consultant preparing the EIS/EIR) will be available at these meetings to receive comments from the public regarding issues of concern that should be addressed in the environmental document. Further public participation is planned, but not currently scheduled.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the scoping meetings. To be most helpful, the scoping comments should clearly describe specific environmental issues or topics which the commentator believes the document should address. Written comments should be mailed no later than December 1, 1994 to the District Engineer, U.S. Army Corps of Engineers, San Francisco District, 211 Main Street, San Francisco, California, 94105 ATTN: Wade Eakle.

a. Significant Issues

The following issues have been identified as potentially significant and will be evaluated in the Draft EIS/EIR. However, the scope of analysis is not limited to these issues.

(1) Geologic conditions
(2) Hydrology, water quality and supply
(3) Traffic and transportation
(4) Air quality
(5) Noise conditions
(6) Biological resources, including endangered species, and fish and wildlife habitat
(7) Visual resources
(8) Cultural and historic resources
(9) Land use, including agricultural activity
(10) Public services and utilities
(11) Public health and safety hazards
(12) Recreational opportunities
(13) Socioeconomics
(14) Energy

b. Environmental requirements

Environmental review and other consultation requirements applicable to the proposed action include:

(1) National Environmental Policy Act of 1969, 42 U.S.C. 4371 et seq., 40 CFR Parts 1500–1508, and all implementing regulations.

(2) Clean Water Act, as amended, 33 U.S.C. 1344.

(3) Rivers and Harbors Act of 1899, 33 U.S.C. 403.

(4) Endangered Species Act of 1973, as amended, 16 U.S.C. 1536, 50 CFR 402.

(5) National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470.

(6) Fish and Wildlife Coordination Act, 16 U.S.C. 661–667.

(7) Coastal Zone Management Act of 1972, 16 U.S.C. 1456.

(8) Final Rule for Regulatory Programs of the Corps of Engineers, 33 CFR Parts 320–330.

(9) Environmental Protection Agency's Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230.

(10) California Environmental Quality Act of 1970, Public Resources Code, Section 21000 et seq., and all subsequent implementing regulations.

(11) Chapter 1600 of the Fish and Game Code.

4. Availability of EIS

The Draft EIS should be available for public review in October 1995.

Michael J. Walsh,

Lieutenant Colonel, Corps of Engineers, District Engineer.

[FR Doc. 94–97421 Filed 11–4–94; 8:45 am]

BILLING CODE 3710–FS–M

Problems in Tender Filing—New Policy

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) is proposing a policy governing carrier's responsibility for tender filings. This policy gives MTMC authority to reject and correct mistakes in rate tender filings, and provides carriers with rate filing procedures for correcting mistakes in rate.

DATES: Comments must be received not later than December 15, 1994.

ADDRESSES: Comments should be mailed to Headquarters, Military Traffic Management Command, ATTN: MTOP–T–ND, Room 621, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara McGinnis, (703) 756–1103.

SUPPLEMENTARY INFORMATION: The proposed policy will be included as an enclosure to all future MTMC Guaranteed and Non-Guaranteed Traffic solicitations.

Problems in Tender Filings

1. Authority.

As indicated in the solicitation, the Assistant Deputy Chief of Staff for Operations-Transportation Services retains the authority to reject and correct mistakes in rate tender filings.

2. Procedures for Filing Tenders

a. General

(1) Carriers are solely responsible to ensure tender submissions are legible and typed. Handwritten or illegibly typed submissions or submissions having typed strikeovers will be returned as being nonresponsive.

(2) If a rate(s), if applicable, is omitted, the tender submission will be returned as being nonresponsive.

(3) If a minimum charge(s), if applicable, is omitted, the tender submission will be returned as being nonresponsive. If a carrier does not want to make a minimum charge, if applicable, that carrier must insert a "0". Tender submission will be returned as being nonresponsive for failure of carrier to insert a "0".

(4) Tender submission may be returned as being nonresponsive for failure of the carrier to submit a properly signed and executed Certificate of Independent Pricing with tender submission.

(5) Tender formats cannot be altered by carriers in any manner. If altered, the tender submission may be returned as being nonresponsive.

b. Carrier Responsibility for Tender Filings

Carriers are solely responsible for the proper preparation, accuracy, and timely submission of their tenders. Carriers are responsible for establishing quality control procedures that will include review of tenders prior to their submission to Headquarters, Military Traffic Management Command. Tenders found to contain errors such as typographical may be granted relief based on justification in support of alleged errors.

c. Administrative Errors

Administrative errors which can be corrected include, but are not limited to, mistakes in the following:

(1) Carrier street address and Standard Carrier Alpha Code.

(2) Carrier telephone number.

(3) Mode, if applicable.

(4) Tender number or series.

(5) Interstate Commerce Commission, and/or intrastate operating authority certificate number.

(6) Typed name of company official authorized to submit rates, address, and telephone number. Tender submission will be returned as being nonresponsive for failure of a carrier to sign its tender.

(7) Tender and rate sheet not corresponding that can be evaluated on an equal basis with other carriers. If a rate sheet varies the material terms (e.g., change in rate qualifier, mileage groups, or minimum weights) of the solicitation so that the rates cannot be evaluated on an equal basis with other carriers, the tender submission will be returned as being nonresponsive.

(8) Failure to submit the required number of original signature copies of the rate tender.

3. Mistakes in Rate Filing Procedures (MIRF)

a. *General.* (1) Carriers discovering a mistake(s) before bid closing time can correct such mistake(s) by submission of a new tender prior to closing. The last tender received before closing governs. Identification of a rate error(s) in a bid submission after opening may be initiated by either HQMTMC or in writing by the carrier. After opening, carriers may either withdraw or seek to correct rate error(s).

(2) Correction is allowed for clerical error(s) where the intended rate is obvious from the bid submission itself, as in the case of misplaced decimal.

(3) Correction is allow in other cases (except in the case of a downward correction which would displace a low bidder) only if the carrier proves the mistake and the rate actually intended by providing HQMTMC (MTOP-T-N) clear and convincing written evidence. If the evidence supports the existence of the mistake, but not the rate actually intended, the carrier will be permitted to withdraw its tender (or MTMC will reject it). Carriers must submit evidence to arrive HQMTMC (MTOP-T-N) within a reasonable time after notification by MTMC of a suspected mistake.

(4) Where a downward correction would displace a low bidder, it is permitted only if the mistake and the intended rate can be determined from the solicitation and the tender itself.

(b) *Evidence.* The following evidence must, at a minimum, be submitted by the carrier when the carrier seeks to correct a mistake in rate other than a clerical error(s):

(1) Original source documents pertinent to the error, including, but not limited to, working papers, spread sheets, transcription sheets, adding machine tapes, tariffs, cost data sheets, memorandum for records, written procedural guidance on determining rate levels, internal rate printouts, and other such papers which will provide a clear audit trail for tracing the mistake.

(2) Other documents deemed by the carrier to be relevant to error validation can also be used as evidence.

(3) To protect their interests, carriers are encouraged to retain original source data until it is certain that no further use for it exists.

4. *Rate Errors*

Rate regression mistakes may be considered for relief under the MIRF procedure. Correction of rate regression mistakes cannot affect other rates already in normal regression. Two examples of correctable rate regression mistakes are shown below:

BILLING CODE 3710-08-M

Example 1:

	Minimum Weights				
Mileage	1,000	2,000	5,000	10,000	20,000
100 or less	$9.60	$4.80	$1.92	$1.20	$.90
101 to 200	$9.60	$4.80	$1.92	$1.20	$.90
201 to 300	$14.30	$7.15	$2.86	$3.00	$1.50
301 to 400	$21.90	$10.95	$4.38	$3.09	$1.55

BILLING CODE 3710-08-C

The error in the above example is the underlined rate which is not in proper rate regression for the higher minimum weight. It can be corrected without affecting the regression for the mileage groups. If the carrier intended a different rate, the carrier may seek correction under the MIRF procedure, provided that the intended rate itself falls within normal regression.

BILLING CODE 3710-08-M

Example 2:

	Minimum Weights				
Mileage	200	500	1,000	2,000	5,000
400 or less	$400	$160	$100	$30	$24
401 to 500	$400	$160	$100	$30	$24
501 to 600	$ 4	$160	$100	$30	$24
601 to 700	$400	$160	$100	$30	$24

BILLING CODE 3710-08-C

The error in the above example is the underlined rate which is not in proper rate regression for the distance. It can be correct without affecting the regression for the minimum weight groups.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-27336 Filed 11-4-94; 8:45 am]

BILLING CODE 3710-08-C

Defense Logistics Agency

Privacy Act of 1974; Alteration of a Record System

AGENCY: Defense Logistics Agency, DoD.

ACTION: Alteration of a record system.

SUMMARY: The Defense Logistics Agency proposes to alter an existing system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The Defense Logistics Agency proposes to add an additional routine use for the system as follows: 'To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the DVA) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101-510 (24 U.S.C. 414).'

DATES: The alteration will be effective without further notice on December 7, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Privacy Act Officer, Programs and Analysis Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304-6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617-7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and may be obtained from the address above.

An altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on October 18, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The specific changes to the record system are set forth below followed by the system notice as altered in its entirety.

Dated: October 28, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base (September 19, 1994, 59 FR 47847).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph as follows: 'To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101-510 (24 U.S.C. 414)'

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S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location - W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA 93943-5000.

Decentralized segments - Portions of this file may be maintained by the military and non-appropriated fund personnel and finance centers of the military services, selected civilian contractors with research contracts in manpower area, and other Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, length of service, military occupation.

aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax I.D. of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

U.S. Postal Service employment/personnel records containing Social Security Number, name, salary, home and work address. U.S. Postal Service records will be maintained on a temporary basis for approved computer matching between the U.S. Postal Service and DOD.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; Appointment Powers and Duties; 10 U.S.C. 2358; Research Projects; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); and E.O. 9397.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel functions, to perform longitudinal statistical analyses, identify current and former DOD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veteran Affairs (DVA) to provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans.

To the Department of Veteran Affairs (DVA) to provide identifying military personnel data to the DVA and its contractor, the Prudential Insurance Company, for the purpose of notifying members of the Individual Ready Reserve (IRR) of their right to apply for Veteran's Group Life Insurance coverage.

To the Department of Veterans Affairs (DVA) to register eligible veterans and their dependents for DVA programs.

To the Department of Veterans Affairs (DVA) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

1. Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program (38 U.S.C. 3104(c), 3006–3008). The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment.

2. Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 106 – Selected Reserve and Title 38 U.S.C., Chapter 30 – Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

3. Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 684) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

4. Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law (38 U.S.C. 3104(c)) requires recoupment of severance payments before DVA disability compensation can be paid.

5. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 3104(c), 3006–3008). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

To the Office of Personnel Management (OPM) consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

To the Office of Personnel Management (OPM) to conduct

computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

1. Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

2. Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DOD to insure that annuities of DOD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

3. Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DOD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

4. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DOD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

To the Department of Health and Human Services (DHHS):

1. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DOD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

2. To the Office of Child Support Enforcement, DHHS, pursuant to 42 U.S.C. 653 and Pub. L. 94–505, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

3. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

4. To the Social Security Administration (SSA), Office of Research and Statistics, DHHS for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

5. To the Bureau of Supplemental Security Income, SSA, DHHS to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

6. To HHS for the purpose of conducting studies concerned with the health and well being of the active duty and veteran population.

To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

To DOD Civilian Contractors for the purpose of performing research on manpower problems for statistical analyses.

To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DOD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.–

To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and

assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DOD personnel.

To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

To Defense contractors to monitor the employment of former DOD employees and members subject to the provisions of 10 U.S.C. 2397.

To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DOD civilian employees and military members.

To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub. L. 97–365).

To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

1. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

2. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101-510 (24 U.S.C. 414).

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

W.R. Church Computer Center - Tapes are stored in a locked cage in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location - Tapes are stored in a bank-type vault; buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

U.S. Postal Service records are temporary and are destroyed after the computer matching program results are verified.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, Selective Service System, and the U.S. Postal Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94-27327 Filed 11-4-94; 8:45am]

BILLING CODE 5000-04-F

Privacy Act of 1974; Notice to Add a Record System

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to add a record system.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The addition will be effective without further notice on November 7, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Privacy Act Officer, Programs and Analysis Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Christensen at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and may be obtained from the address above.

A system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on October 18, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994).

Dated: October 25, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S800.10 MM

SYSTEM NAME:

Federal Property End Use Files.

SYSTEM LOCATION:

Records are maintained by the Defense Reutilization and Marketing Service, 74 Washington Avenue North, Battle Creek, MI 49017–3092; by the Defense Reutilization and Marketing Service National Sales Office, 2163 Airways Boulevard, Memphis, TN 38114–5052; and by the Commanders of the Defense Contract Management Districts. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, businesses, and organizations who bid on or participate in the DoD surplus personal property sales program or the excess contractor inventory sales program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's name, address, date and place of birth, Social Security Number, telephone number, company affiliation, nature of business, firms identification/tax number, and information on the intended end use of the property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136 (Assistant Secretaries of Defense); 22 U.S.C. 2751–2799 (Arms Export Control); 40 U.S.C. 471–484 (Federal Property Management); 50 App. U.S.C. 2401 et seq. (Export Administration); E.O. 9397; E.O. 12738 (Export Controls); 22 CFR part 122 (International Traffic in Arms Regulations); 41 CFR part 101 (Federal Property Management); DoD Regulation 2030.1; DoD Instruction 2030.6; DoD Directive 2030.7; and DoD Directive 4160.21.

PURPOSE(S):

Records are used in the management of the property disposal programs to determine bidder eligibility to participate in the programs and to ensure that property recipients comply with the terms of the sale regarding end use of the property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of the Treasury to ensure that recipients comply with U. S. Customs rules and regulations regarding movement of the property.

To the Department of Transportation to ensure compliance with rules regarding Federal Aviation Administration airworthiness certificates for surplus military aircraft.

To the General Services Administration to determine the presence of debarment proceedings against a bidder.

To the Department of State to ensure compliance with the International Traffic in Arms regulations.

To the Department of Commerce to ensure compliance with the Export Administration regulations.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, company name, or sales number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computer files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Records pertaining to foreign excess personal property are destroyed 6 years after completion of trade security controls on individual transaction; records pertaining to other surplus items are destroyed 7 years after bid award date.

SYSTEM MANAGER(S) AND ADDRESS:

The Deputy Director for Material Management, DLA-MM, Cameron Station, Alexandria, VA 22304–6100.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject and by Federal agencies monitoring arms trafficking, property movement, and export control regulations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–27281 Filed 11–4–94; 8:45 am]
BILLING CODE 5000–04–F

Privacy Act of 1974; Computer Matching Program Between the Department of Labor and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Department of Labor (DOL) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between DOL and DoD that their records are being matched by computer. The record subjects are DOL delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under programs administered by DOL so as to permit DOL to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective December 7, 1994, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and DOL have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that DOL can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between DOL and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Debt Collection Officer, Department of Labor, Office of the Secretary, Office of Financial Management MS 7258 MIB, Washington, DC 20240. Telephone (202) 208–4703.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on October 21, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: October 27, 1994.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Between the Department of Labor and the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the Department of Labor (DOL) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The DOL is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* Upon the execution of an agreement, the DOL will provide and disclose debtor records to DMDC to identify and locate any matched Federal personnel, employed or retired, who may owe delinquent debts to the Federal Government under certain programs administered by the DOD. The DOL will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by the DOL of any employing Federal agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; section 206 of Executive Order 11222; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 - 550.1108 Collection by Offset from Indebted Government Employees (OPM); 29 CFR 20.74 - 20.90 Salary Offset (Department of Labor).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for

the purpose of this computer match are as follows:

OWCP will use personal data from the record system identified as DOL/GOVT–1, entitled 'Office of Workers' Compensation Programs, Federal Employees' Compensation File,' published in the **Federal Register** at 58 FR 49548 on September 23, 1993 with amendments published at 59 FR 47361 on September 15, 1994.

DMDC will use personal data from the record systems identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** on February 22, 1993, at 58 FR 10875.

Sections 5 and 10 of the Debt Collection Act authorize agencies to disclose information about debtors in order to effect salary or administrative offsets. Agencies must publish routine uses pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. Sections 5 and 10 of the Debt Collection Act will comprise the necessary authority to meet the Privacy Act's 'compatibility' condition. The systems of records described above contain an appropriate routine use disclosure between the agencies of the information proposed in the match. The routine use provisions are compatible with the purpose for which the information was collected.

E. *Description of computer matching program:* The DOL, as the source agency, will provide DMDC with a magnetic computer tape which contains the names of delinquent debtors in programs the DOL administers. Upon receipt of the magnetic computer tape file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the DOL file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of employment records of Federal employees and military members, active, and retired. Matching records ('hits'), based on the SSN, will produce the member's name, service or agency, category of employee, and current work or home address. The hits or matches will be furnished to the DOL. The DOL is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with the DOL source file and for resolving any discrepancies or inconsistencies on an individual basis. The DOL will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The magnetic computer tape provided by DOL will contain data elements of the debtor's name, Social Security Number, debtor status and debt balance, internal account numbers and the total amount owed on approximately 1,000 delinquent debtors.

The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and Guard, and the OPM government wide Federal civilian records of current and retired Federal employees.

DMDC will match the SSN on the DOL magnetic computer tape by computer against the DMDC database. Matching records, hits based on SSN, will produce data elements of the member's name, SSN, service or agency, and current work or home address.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated annually. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between DOL and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 94–27280 Filed 11–4–94; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Partially Closed Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: November 17–19, 1994.

TIME: November 17, 1994—Subject Area Committee #2, 4:00 p.m.–4:30 p.m. (open), 4:30 p.m.–6:00 p.m. (closed); Achievement Levels Committee, 4:00 p.m.–6:00 p.m. (open). November 18, 1994—Executive Committee, 7:00 a.m.–8:30 a.m. (open); Full Board, 8:45 a.m.–10:00 a.m. (open); Subject Area Committee #1, 10:00 a.m.–12:00 noon (open); Reporting and Dissemination Committee, 10:00 a.m.–12 noon (open); Design and Analysis Committee, 10:00 a.m.–12 noon (open); Full Board, 12:00 noon–1:30 p.m. (closed), 1:30 p.m.–5:15 p.m. (open). November 19, 1994—9:00 a.m. until adjournment, approximately 12:00 noon (open).

LOCATION: The Madison Hotel, 15th and M Streets, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On November 17, two committees will be in session. Subject Area Committee #2 will meet from 4:00 p.m. to 6:00 p.m. The committee will meet in open session from 4:00 p.m. until 4:30

p.m. to hear a report on the National Endowment for the Arts survey of school arts programs. From 4:30 p.m.–6:00 p.m. the meeting will be closed to the public to permit the committee to review field test items for the arts assessment. This meeting must be conducted in closed session because premature disclosure of the information presented for review might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C. The Achievement Levels Committee will meet in open session from 4:00 p.m. until 6:00 p.m. The committee will discuss a report from American College Testing (ACT) on the following topics: Research results from geography and history pilots and the final design for and types of judges that should be participants in the achievement levels-setting meetings scheduled for November and December.

On November 18, the Executive Committee will meet in open session from 7:00 a.m. until 8:30 a.m. The agenda includes a discussion of principles to guide the NAEP assessment schedule through the year 2000; implications of the reauthorization legislation; and matters related to the FY 1995 budget.

Also on November 18, the full Board will convene in open session at 8:45 a.m. The morning session of the full Board meeting, to 10:00 a.m., includes approval of the agenda, the Executive Director's report, and an update on NAEP activities. From 10:00 a.m. until 12:00 noon, three of the Board's standing committees, Subject Area #1, Reporting and Dissemination, and Design and Analysis will meet in open session.

Beginning at 12:00 noon, until 4:30 p.m., the full Board will meet in partially closed session. From 12:00 noon until 1:30 p.m., the meeting will be closed to the public. The Board will hear a report on the 1992 NAEP Report of the Integrated Reading Performance Record which will include references to specific items from the assessment. This portion of the meeting must be closed because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of these data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C. From 1:30 p.m. until 5:15 p.m., the meeting will be open to the public. The Board will hear reports on the National Education Goals, and States as NAEP Partners, a panel discussion on the NCES/NAGB Joint Conference on Standard Setting. Also, the Board will receive an ethics briefing provided by the Office of General Counsel.

On November 19, at 9:00 a.m., the full Board will reconvene. The agenda for this session includes a report from the Ad Hoc Committee on NAEP Background Questionnaires, and from each of the standing committees: Subject Area Committees #1 and #2, Reporting and Dissemination, Design and Analysis, Achievement Levels, and Executive. This meeting of the National Assessment Governing Board will be adjourned at approximately 12:00 noon.

A summary of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: November 2, 1994.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 94–27513 Filed 11–4–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Pantex Plant.

DATES: Saturday, November 19, 1994: 8:30 am–2:30 pm.

ADDRESSES: November 19, 1994 meeting: Amarillo Association of Realtors, 5601 Enterprise Circle, Amarillo, TX 79106.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806)477–3121.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The Environmental Management Site Specific Advisory Board, Pantex Plant provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

8:30 am Welcome, Agenda Review and Introductions, Greetings from Co-Chairs

8:45 am Updates
- •occurrence report by DOE (questions regarding the October report and presentation of the November report)
- •preparation for November 19, 1994 News Conference
- •liability of Board Members—Sam Goodhope
- •Other

9:15 am Emergency Response preparations and discussions

12:15 pm Lunch (A modest lunch will be provided at the meeting. Participating board members and guests will be asked to contribute to cover the costs.)

1:15 pm Working Group Reports

Nominations and Membership Working Group
- •draw straws for Environmental Management Site Specific Advisory Board, Pantex Plant terms
- •report on replacement for Alisa Sell

Budget and Finance Working Group—status of work

Community Outreach Working Group—status of work

Policy and Personnel Working Group—status of work

Training and Program Working Group
- •action plans (approach/proposal)
- •financial support for speakers

2:00 pm Discussion regarding the creation of task forces

2:10 pm Nomination of individual to serve on national Environmental Management Site Specific Advisory Board evaluation committee

2:20 pm Next Meeting dates and locations discussion

Public comment will be taken periodically throughout the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the

presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806)371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806)537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on November 2, 1994.

Rachel Murphy Samuel,

Acting Advisory Committee Management Officer.

[FR Doc. 94–27531 Filed 11–4–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. F–075]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Rheem Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–075) granting a Waiver to Rheem Manufacturing Company (Rheem) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Rheem's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GRA upflow, and GSA downflow condensing gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Rheem has been granted a Waiver for its GRA upflow, and GSA downflow condensing gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on November 1, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Rheem filed a "Petition for Waiver," dated July 15, 1994, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the **Federal Register** on September 15, 1994, Rheem's petition and solicited comments, data and information respecting the petition. 59 FR 47317. Rheem also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on September 7, 1994. 59 FR 47317, September 15, 1994.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Rheem Petition. The FTC did not have any objections to the issuance of the waiver to Rheem.

Assertions and Determinations

Rheem's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Rheem requests the allowance to test using a

20-second blower time delay when testing its GRA upflow, and GSA downflow condensing gas furnaces. Rheem states that since the 20-second delay is indicative of how these models actually operate, and since such a delay results in an average of approximately 3.0 percent improvement in energy efficiency, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5 minute delay. Rheem indicates that it is unable to take advantage of any of these exceptions for its GRA upflow, and GSA downflow condensing gas furnaces.

Since the blower controls incorporated on the Rheem furnaces are designed to impose a 20-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 20-second blower time delay when testing the Rheem GRA upflow, and GSA downflow condensing gas furnaces. Accordingly, with regard to testing the GRA upflow, and GSA downflow condensing gas furnaces, today's Decision and Order exempts Rheem from the existing provisions regarding blower controls and allows testing with the 20-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Rheem Manufacturing Company. (Case No. F–075) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Rheem Manufacturing Company, shall be permitted to test its GRA upflow, and GSA downflow condensing gas furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Rheem Manufacturing Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GRA upflow, and GSA downflow condensing gas furnaces manufactured by Rheem Manufacturing Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective November 1, 1994, this Waiver supersedes the Interim Waiver granted the Rheem Manufacturing Company on September 7, 1994. 59 FR 47317, September 15, 1994 (Case No. F–075).

Issued In Washington, DC, on November 1, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–27533 Filed 11–4–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL95–5–000, et al.]

General Electric Capital Corp., et al.; Electric Rate and Corporate Regulation Filings

October 28, 1994.

Take notice that the following filings have been made with the Commission:

1. General Electric Capital Corporation

[Docket No. EL95–5–000]

Take notice that on October 18, 1994, General Electric Capital Corporation (GE Capital), the principal place of business of which is 260 Long Ridge Road, Stamford, Connecticut, 06927, filed with the Federal Energy Regulatory Commission (Commission) a Petition for a Declaratory Order. GE Capital has requested that the Commission find that GE Capital's proposed acquisition of a foreign utility company, as defined in Section 33 of the Public Utility Holding Company Act of 1935, as amended, will not cause it or any of its subsidiaries to be deemed "primarily engaged in the generation or sale of electric power" for purposes of the restrictions on ownership of qualifying cogeneration or small power production facilities contained in Sections 3(17) and 3(18) of the Federal Power Act and Part 292 of the Commission's regulations.

Comment date: November 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. ER95–50–000]

Take notice that on October 20, 1994, Louisville Gas and Electric Company (LG&E) tendered for filing an amendment to the Agreement between LG&E, The Cincinnati Gas and Electric Company (CG&E), and Tennessee Valley Authority (TVA). The original Agreement between LG&E, CG&E and TVA was dated September 23, 1957, and amended effective October 8, 1983.

The purpose of this filing is to amend the transmission toll charged by LG&E for energy transactions between CG&E and TVA and to require advance scheduling for such transactions. The proposed toll charge, as well as the scheduling requirement, was negotiated and agreed to by the affected parties.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: November 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Gulfstream Energy, LLC

[Docket No. ER94–1597–000]

Take notice that on September 29, 1994, Gulfstream Energy, LLC tendered for filing an amendment in the above-referenced docket.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. The Narragansett Electric Company

[Docket No. ER94–1610–000]

Take notice that The Narragansett Electric Company on October 14, 1994, tendered for filing an amendment to its filing in this docket.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Arkansas Power & Light Company

[Docket No. ER95–49–000]

Take notice that Arkansas Power & Light Company (AP&L) filed on October 19, 1994, a proposed joint Stipulation with Arkansas Electric Corporation (AECC). The proposed Joint Stipulation would modify the rate formulas currently applicable to AECC. The proposed changes to the rate formulas would result in the formulas tracking AP&L's costs more accurately and would also streamline the administrative process associated with the annual redetermination of AECC's rates utilizing the rate formulas.

Comment date: November 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Thermo Cogeneration Partnership, L.P.

[Docket Nos. QF87–552–003 and EL95–1–000]

On October 25, 1994, Thermo Cogeneration Partnership, L.P. tendered for filing additional information in support of its request for waiver of the technical standards relating to its cogeneration facility.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27458 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EF95–5171–000, et al.]

Western Area Power Administration, et al.; Electric Rate and Corporate Regulation Filings

November 1, 1994.

Take notice that the following filings have been made with the Commission:

1. Western Area Power Administration

[Docket No. EF95–5171–000]

Take notice that on October 25, 1994, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–63, did confirm and approve on an interim basis, to be effective on December 1, 1994, the Western Area Power Administration's (Western) Rate Schedule SLIP–F5 for firm power service from the Salt Lake City Area Integrated Projects.

The rate in Rate Schedule SLIP–F5 will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval of these or of substitute rates on a final basis, ending November 3, 1999.

The fiscal year (FY) power repayment study indicated that the existing rate does not yield sufficient revenue to satisfy the cost-recovery criteria through the study period. The revised rate schedules will yield adequate revenue to satisfy these criteria.

The Administrator of Western certifies that the rates are consistent with applicable law and that they are the lowest possible rates consistent with sound business principles. The Deputy Secretary of the Department of Energy states that the rate schedule is submitted for confirmation and approval on a final basis for a 5-year period beginning December 1, 1994, and ending November 30, 1999, pursuant to authority vested in FERC by Delegation Order No. 0204–108, as amended.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. SEI Holdings IX, Inc.

[Docket No. EG95–5–000]

On October 28, 1994, SEI Holdings IX, Inc., 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338 (the "Applicant"), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to Part 365 of the Commission's regulations.

The Applicant will be engaged indirectly, through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 ("PUHCA"), in owning and operating eligible facilities located in Trinidad and Tobago: the 236 MW Penal Plant, located at Penal, in the ward of Siparia, County of St. Patrick, consisting of two simple cycle gas turbines and a combined cycle generating unit comprised of two gas turbines, one heat recovery steam generator, and one steam turbine; the 634 MW Point Lisas Plant, located at Point Lisas Industrial Estate in the ward of Couva, County of Caroni, consisting of ten simple cycle turbines; and the 308 MW Port of Spain Plant, located in the city of Port of Spain, consisting of four steam turbine and two simple cycle gas turbine generator units. The facilities are all in commercial operation. The facilities are gas fired; the Port of Spain Plant also has the capability to use fuel oil as a back-up.

Comment date: November 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. EL94–34–001]

Take notice that on October 24, 1994, Western Resources, Inc. tendered for filing its compliance report in the above-referenced docket.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Power Systems, Inc.

[Docket No. EL95–3–000]

Take notice that on October 14, 1994, Midwest Power Systems, Inc. (Midwest Power) tendered for filing a Petition for Declaratory Order permitting Midwest Power to reduce its annual composite rate of depreciation from 3.54 percent to 3.49 percent.

5. Equitable Resources Marketing Co., Equitable Power Services Co.

[Docket Nos. ER94–1029–001, ER94–1539–001]

Take notice that on October 17, 1994, Equitable Power Services Company (EPSC) filed certain information, on behalf of Equitable Resources Marketing

Company (ERMC) and itself, as required by the Commission's June 7, 1994 letter order in Docket No. ER94–1029–001 and the Commission's September 8, 1994, letter order in Docket No. ER94–1539–000. Copies of ERMC and EPSC's informational filing are on file with the Commission and are available for public inspection.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Rainbow Energy Marketing Corporation

[Docket No. ER94–1061–002]

Take notice that on October 19, 1994, Rainbow Energy Marketing Corporation (REMC) filed certain information as required by the Commission's June 10, 1994, letter order in Docket No. ER94–1061–000. Copies of REMC's informational filing are on file with the Commission and are available for public inspection.

7. Northeast Utilities Service Company

[Docket No. ER94–1125–000]

Take notice that on October 27, 1994, Northeast Utilities Service Company (NUSCO), submitted for filing, on behalf of the Northeast Utilities (NU) System Companies, a revised FERC Electric Tariff No. 6—System Power Sales and Exchanges in response to concerns raised by FERC staff on the initial filing. NUSCO requests that the proposed tariff be made effective on the day following the date of receipt of this amendment by the Commission, or, in the alternative, the earlier of (i) sixty days following the filing of this amendment or (ii) the earliest requested effective date for a subsequently filed Service Agreement under Tariff No. 6.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. MidCon Power Services Corporation

[Docket No. ER94–1329–001]

Take notice that on October 26, 1994, MidCon Power Services Corporation (MPS) filed certain information as required by the Commission's August 11, 1994, letter order in Docket No. ER94–1329–000. Copies of MPS's informational filing are on file with the Commission and are available for public inspection.

9. R. J. Dahnke & Associates

[Docket No. ER94–1352–001]

Take notice that on October 17, 1994, R. J. Dahnke & Associates (RJD&A) filed certain information as required by the Commission's August 13, 1994, letter order in Docket No. ER94–1352–000. Copies of RJD&A's informational filing are on file with the Commission and are available for public inspection.

10. Valero Power Services Company

[Docket No. ER94–1394–001]

Take notice that on October 26, 1994, Valero Power Services Company (VPS) filed certain information as required by the Commission's August 24, 1994, letter order in Docket No. ER94–1394–000. Copies of VPS's informational filing are on file with the Commission and are available for public inspection.

11. TexPar Energy, Inc.

[Docket No. ER95–62–000]

Take notice that on October 24, 1994, TexPar Energy, Inc. (TexPar), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waiver and blanket approvals under various regulation of the Commission and for an order accepting its FERC Electric Rate Schedule No.1.

TexPar intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where TexPar sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. TexPar is not in the business of generating, transmitting, or distributing electric power.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Indiana Michigan Power Company

[Docket No. ER94–1495–000]

Take notice that on October 26, 1994, American Electric Power Service Corporation, on behalf of Indiana Michigan Power Company, tendered for filing an amendment to its original filing in the above referenced docket.

A copy of the filing was served upon the Indiana Utility Regulatory Commission, the Michigan Power Service Commission, and all parties of record.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER94–1505–000]

Take notice that on October 1, 1994, Illinois Power Company (Illinois) tendered for filing an amendment in the above-referenced docket.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER95–46–000]

Take notice that on October 19, 1994, New England Power Company (NEP) tendered for filing a Notice of Termination for a Supplement to the Service Agreement between NEP and Fitchburg Gas and Electric under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. The Montana Power Company

[Docket No. ER95–57–000]

Take notice that on October 21, 1994, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, Supplements to Montana Rate Schedule FERC No. 45, the Pacific Northwest Coordination Agreement: Energy Storage Agreements between Montana and each of Chelan County PUD No. 1, Colockum Transmission Co., Inc., Cowlitz County PUD No. 1, PUD No. 1 of Douglas County, PUD No. 1 of Grant County, PUD No. 1 of Pend Oreille County, PUD No. 1 of Snohomish County, and Tacoma City Light.

A copy of the filing was served upon each of the utilities listed above.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Central Power and Light Company West Texas Utilities Company

[Docket No. ER95–58–000]

Take notice that on October 21, 1994, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) tendered for filing a CPL/WTU Electric Reliability Council of Texas (ERCOT) Coordination Transmission Service Tariff (CST); a revised index of customers taking service under the CST; unexecuted service agreements under which CPL and WTU will provide service under the CST; a revised version of WTU's ERCOT Transmission Service Tariff; a revised version of CPL's ERCOT Transmission Service Tariff; a revised Attachment A to WTU's Master ERCOT Transmission Facility Charge Rate Schedule and a revised Attachment A to CPL's Master ERCOT Transmission Facility Charge Rate Schedule. The filing would allow CPL and WTU to begin to collect facility charges in connection with the transmission of Economy "A" Energy and Emergency Power for other ERCOT utilities. CPL and WTU explain that such changes are necessary to being their tariffs into

conformance with recent changes in ERCOT operating practices.

CPL and WTU have requested a waiver of the Commission's regulations to allow the changed rate schedules to become effective as of October 22, 1994.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Pennsylvania Electric Company

[Docket No. ER95–60–000]

Take notice that on October 24, 1994, Pennsylvania Electric Company (Penelec) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) an amendment to its existing rate schedule for transmission and supplemental power services to Allegheny Electric Cooperative, Inc. (Allegheny Cooperative). Under such existing rate schedule, Penelec has been providing such services to Allegheny Cooperative through 173 delivery points in Pennsylvania and one delivery point in New Jersey.

Allegheny Cooperative has requested, and Penelec has agreed, that the Penelec demand rates for service supplied by Penelec to Allegheny Cooperative be revised, on a revenues neutral basis, to provide for billing by Penelec to Allegheny Cooperative on a coincident peak basis. Allegheny Cooperative would like to make that change effective as of November 1, 1994, the start of Allegheny Cooperative's next fiscal year, and Penelec has requested that effective date for the subject amendment.

The proposed amendment will also increase, by approximately 5%, the billing credit that Allegheny Cooperative receives for its 10% undivided joint ownership interest in the Susquehanna Steam Electric Station and will resolve two disputes between Penelec and Allegheny cooperative relating to the scope of Penelec's supply to Allegheny Cooperative. Penelec has requested a waiver of Section 35.3(a) of the Commission's Regulations (18 CFR 35.3(a) to the extent required to permit the proposed amendment to go into effect not later than November 1, 1994.

Copies of the filing have been served on the Pennsylvania Public Utility Commission and Allegheny Cooperative.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Company of New Mexico

[Docket No. ER95–61–000]

Take notice that on October 24, 1994, Public Service Company of New Mexico (PNM), tendered for filing a Notice of Termination of two letter agreements providing for the banking of energy under Service Schedule C to the Interconnection Agreement between PNM and the City of Anaheim, California (Anaheim), Supplements 1 and 2 to Supplement 1 to PNM Rate Schedule FERC No. 96. Termination of the letter agreements is to be effective as of October 18, 1994. PNM requests waiver of the applicable notice requirements.

Copies of this filing have been served upon Anaheim and New Mexico Public Utility Commission.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Maine Public Service Company

[Docket No. ER95–63–000]

Take notice that on October 24, 1994, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Louis Dreyfus Electric Power Inc. Maine Public states that the service agreement is being submitted pursuant to its tariff provision pertaining to the short-term non-firm sale of capacity and energy which establishes a ceiling rate at Maine Public's cost of service for the units available for sale.

Maine Public requests that the service agreement become effective on October 17, 1994 and requests waiver of the Commission's regulations regarding filing.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. South Carolina Electric & Gas Company

[Docket No. ER95–64–000]

Take notice that on October 24, 1994, South Carolina Electric & Gas Company (SCE&G), tendered for filing proposed changes in its FERC Electric Service Tariff (Volume Nos. 1–1V).

The proposed changes would increase revenues from jurisdictional sales and service by $1,928,000 based on the 12 month period ending December 31, 1995. The Company also proposes a revised wholesale electric tariff designated as Third Revised Volume No. 1, to supersede Second Revised Volume No. 1.

SCE&G states that the proposed increased rates are necessitated by the fact that it is realizing an unreasonable low rate of return on sales to its jurisdictional customers.

Copies of this filing were served upon the public utility's jurisdictional customers and the South Carolina Public Service Commission.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

21. Portland General Electric Company

[Docket No. ER95–71–000]

Take notice that on October 25, 1994, Portland General Electric Company (PGE) tendered for filing service agreements under FERC Electric Tariff, Original Volume No. 1 (PGE–1), with Rainbow Energy Marketing Corporation (Rainbow), and British Columbia Power Exchange Corporation (POWEREX). PGE has requested that the Service Agreements be accepted by the Commission, effective October 24, 1994. Copies of the filing have been served on the parties included in the Certificate of Service attached to the filing letter.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

22. Consumers Power Company

[Docket No. ER95–76–000]

Take notice that on October 26, 1994, Consumers Power Company, tendered for filing a new wholesale service agreement providing for the sale of firm and non-firm power to Alpena Power Company.

Copies of the filing were served upon Alpena Power Company and the Michigan Public Service Commission.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

23. The Washington Water Power Company

[Docket No. ER95–77–000]

Take notice that on October 26, 1994, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a rate revision for the Transmission Agreement between The Washington Water Power Company, City of Spokane, and Puget Sound Power & Light Company. WWP states that this rate schedule is related to transmission wheeling service for the City of Spokane to Puget Sound Power and Light Company. WWP requests that the Commission accept the rate revision to be effective at 2400 hours December 31, 1994.

A copy of this filing was served upon the City of Spokane and Puget Sound Power and Light Company.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

24. The Dayton Power and Light Company

[Docket No. ER95–83–000]

Take notice that The Dayton Power and Light Company (Dayton) tendered for filing on October 27, 1994, executed Power Services Agreements (PSA) between Dayton and The Village of Arcanum, The Village of Jackson Center, The Village of Lakeview, The Village of Mendon, The Village of New Bremen, and The Village of Waynesfield, Ohio (Municipals).

Pursuant to Rate Schedules A through E attached to the PSA, DP&L will provide to Municipals, on an unbundled basis, long-term firm and short-interruptible transmission services and a variety of power supply services, all subject to flexible notice and scheduling provisions and fixed long-term prices. Dayton and Municipals are currently parties to a Service Agreement for partial requirements service pursuant to Dayton's FERC Electric Tariff, Original Volume No. 2, filed pursuant to and governed by the Settlement Agreement accepted for filing in Docket No. ER83–333–000. The Agreements will replace the existing Partial Requirements Service Agreements in place for these municipals. Dayton and Municipals request an effective date of January 1, 1995.

A copy of the filing was served upon The Village of Arcanum, The Village of Lakeview, The Village of Mendon, The Village of New Bremen, and The Village of Waynesfield, Ohio and The Public Utilities Commission of Ohio.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

25. Green Mountain Power Corporation

[Docket No. ER95–84–000]

Take notice that on October 27, 1994, Green Mountain Power Corporation (GMP) tendered for filing revisions to the definition of "Public Utility" eligible to purchase power under its FERC Electric Tariff, Original Volume No. 2 (the "Tariff"). GMP states that these revisions were intended to permit power marketers regulated by the Federal Energy Regulatory Commission under Part II of the Federal Power Act to purchase power under the Tariff, and to clarify that the New York Power Authority is a municipal corporation eligible to purchase power from GMP under the Tariff. GMP also tendered for filing service agreements with two power marketers desiring to purchase power under the Tariff: Louis Dreyfus Electric Power Inc. and ENRON Power Marketing. GMP has requested that these filings be made effective as of January 1, 1995.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27535; Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–39–000]

Cavallo Pipeline Co.; Notice of Petition for Declaratory Order

November 1, 1994.

Take notice that on October 26,1994, Cavallo Pipeline Company (Cavello), 1700 First City Tower, 1001 Fannin Street, Houston, Texas 77002, filed a petition for a declaratory order in Docket No. CP95–39–000, requesting that the Commission declare that its facilities are production and gathering facilities exempt from regulation by the Commission under Section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Cavello states that it is an intrastate pipeline company performing transportation in interstate commerce under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). Cavello claims that it owns and operates a natural gas pipeline located in offshore Texas state waters to a point onshore. Cavallo seeks a declaratory order holding that the facilities meet the physical criteria for determining gathering and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the NGA.

In support of its claim that the primary function of the proposed facility is gathering, Cavallo points out the following: (1) the length and diameter (16.4 miles of 20-inch and 21.3 miles of 16-inch) are comparable to other offshore lines previously determined to be gathering, (2) the system lacks compression because it relies on wellhead pressure to move the gas, (3) there is no central point in the field given the nature of the offshore operations, (4) location of the wells are in the producing area and the lines are designed to gather gas from the platforms to the nearest pipeline, and (5) the geographic configuration of the line is an inverted "Y". Finally, Cavello states that its facilities are very similar to other facilities that the Commission has found to be gathering facilities.

Any person desiring to be heard or to make a protest with reference to said petition should, on or before December 1, 1994, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, D.C. 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27464 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–229–000]

Granite State Gas Transmission, Inc.; Notice of Informal Settlement Conference

November 1, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on November 7, 1994, at 11:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the

Commission's regulations (18 FR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208–1602, or Lorna J. Hadlock at (202) 208–0737.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27463 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–15–001]

Mid Louisiana Gas Co.; Notice of Proposed Change of Rates

November 1, 1994.

Take notice that on October 28, 1994, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following Tariff Sheets to be effective October 1, 1994:

Fourth Revised Sheet No. 4
Fourth Revised Sheet No. 4A

Superseding

Second Revised Sheet No. 4
Second Revised Sheet No. 4A

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheets is to correct a tariff sheet pagination error contained in Mid Louisiana's September 1, 1994, filing in this docket.

This filing is being made in accordance with Section 22 of Mid Louisiana's FERC Gas Tariff.

Mid Louisiana states that copies of this filing have been mailed to Mid Louisiana's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27459 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–343–000; RP94–237–000]

NorAm Gas Transmission Co.; Arkansas Gas Consumers v. NorAm Gas Transmission Co.; Notice of Technical Conference

November 1, 1994.

Take notice that on Thursday, November 17, 1994, at 10:00 a.m., the Commission's Staff will convene a technical conference to allow parties to address the issues outlined in the Commission's August 31, 1994, order in Docket Nos. RP94–343–000 and RP94–237–000.[1] The technical conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426. All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27462 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–23–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

November 1, 1994.

Take notice that on October 31, 1994, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective November 1, 1994.

First Revised Sheet No. 150
First Revised Sheet No. 151
First Revised Sheet No. 152

Northern states that such tariff sheets are being submitted to reflect the termination of CD service.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before November 8, 1994. Protests will be considered by the Commission in determining the appropriate proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27461 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–24–000]

Wyoming Interstate Co., Ltd.; Notice of Tariff Filing

November 1, 1994.

Take notice that on October 31, 1994, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariffs, First Revised Volume No. 1 and Second Revised Volume No. 2, revised tariff sheets, as listed in the attached Appendix A, to be effective December 1, 1994.

WIC proposes revisions to:

- Clarify and conform its capacity release program.
- Correct omission concerning nominations utilizing Electronic Bulletin Board.
- Revise hydrocarbon dew point specification.
- Correct errors in billing section of tariff and revise from "3 months" to "2 months" the estimate of charges for performing service, WIC may require Shipper to maintain.
- Remove contract entitlement for interruptible transportation service.
- Change or correct other minor items.

WIC states that copies of this filing were served upon all WIC transportation customers and State Commissions where WIC provides transportation service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before November 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are

[1] NorAm Gas Transmission Co., 68 FERC ¶61,272 (1994).

available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

Appendix A

WIC First Revised Volume No. 1
- First Revised Sheet No. 14
- First Revised Sheet No. 15
- First Revised Sheet No. 16
- First Revised Sheet No. 17
- First Revised Sheet No. 18
- First Revised Sheet No. 19
- First Revised Sheet No. 24
- First Revised Sheet No. 25
- Second Revised Sheet No. 26
- First Revised Sheet No. 27
- First Revised Sheet No. 28
- First Revised Sheet No. 29
- Original Sheet No. 29A
- Original Sheet No. 29B
- Original Sheet No. 29C
- Original Sheet No. 29D
- Original Sheet No. 29E
- Original Sheet No. 29F
- Original Sheet No. 29G
- Original Sheet No. 29H
- First Revised Sheet No. 30
- First Revised Sheet No. 31
- First Revised Sheet No. 41
- First Revised Sheet No. 42
- First Revised Sheet No. 43
- First Revised Sheet No. 45
- First Revised Sheet No. 46
- First Revised Sheet No. 51
- First Revised Sheet No. 58

WIC Second Revised Volume No. 2
- Second Revised First Revised Sheet No. 4
- First Revised Sheet No. 19
- First Revised Sheet No. 25
- First Revised Sheet No. 27
- First Revised Sheet No. 28
- First Revised Sheet No. 29
- First Revised Sheet No. 31
- First Revised Sheet No. 32
- First Revised Sheet No. 36
- First Revised Sheet No. 37
- First Revised Sheet No. 38
- First Revised Sheet No. 39
- First Revised Sheet No. 42
- First Revised Sheet No. 43
- First Revised Sheet No. 45
- First Revised Sheet No. 46
- First Revised Sheet No. 47
- First Revised Sheet No. 48
- First Revised Sheet No. 53
- First Revised Sheet No. 54
- Second Revised Sheet No. 55
- First Revised Sheet No. 56
- First Revised Sheet No. 57
- First Revised Sheet No. 57A
- First Revised Sheet No. 57B
- First Revised Sheet No. 57C
- First Revised Sheet No. 57D
- First Revised Sheet No. 57E
- First Revised Sheet No. 57F
- First Revised Sheet No. 57G
- First Revised Sheet No. 57H
- First Revised Sheet No. 57I
- First Revised Sheet No. 57J
- First Revised Sheet No. 58
- First Revised Sheet No. 59
- First Revised Sheet No. 64
- First Revised Sheet No. 70
- First Revised Sheet No. 80
- First Revised Sheet No. 81

[FR Doc. 94–27460 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–27–000]

Trunkline Gas Co. Notice of Application

November 1, 1994.

Take notice that on October 20, 1994, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–27–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation services provided to Chevron Chemical Company (Chevron), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline specifically requests authority to abandon firm transportation service, effective December 1, 1994, provided to Chevron pursuant to an agreement (Agreement) embodied in Rate Schedule T–96 of Trunkline's FERC Gas Tariff, Original Volume No. 2. Trunkline indicates that under Rate Schedule T–96, Trunkline utilizes its capacity in the system of Stingray Pipeline Company (Stingray) to receive up to 1,250 Mcf per day for Chevron's account from West Cameron Blocks 532, 533 and 534, Offshore Louisiana. According to Trunkline, Chevron gave Trunkline written notice of its intent to terminate the Agreement by letter dated October 17, 1994, and Trunkline accepted Chevron's termination letter. Trunkline indicates in its application that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 22, 1994, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27465 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5096–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 7, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of the ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Application for Reference or Equivalent Method Determination (OMB Control No. 2080–0005; EPA ICR No. 0559.05).

Abstract: This ICR is an extension of an existing information collection to support the establishment of, or

modification to, reference or equivalent method determinations for candidate air monitoring methods. Under the Clean Air Act (CAA), as set forth at 40 CFR part 53, entities seeking to have an ambient air pollutant monitoring method designated by the EPA as a reference or equivalent method must conduct required tests of the candidate method and must apply to EPA by submitting test results and other information. The information is necessary to determine whether specific methods intended for air pollution monitoring are adequate for determining attainment or non-attainment with the National Ambient Air Quality Standards established under the CAA, as set forth at 40 CFR part 50.

Applicants must provide EPA with information that includes: (1) Identification and detailed method description; (2) comprehensive operation or instruction manuals that include procedures for field use of method; (3) test data, records and calculations to support performance specifications; (4) a statement that the method has been evaluated in accordance with required procedures; (5) a description of their quality assurance program; and (6) identification of confidential or proprietary information. Applicants must maintain records for seven years on the names and ultimate purchasers of methods sold as designated reference or equivalent methods.

Upon receiving the application, EPA will publish a Notice of Receipt in the **Federal Register**, and technically evaluate the information in order to approve or disapprove of the application. EPA may request auxiliary tests or additional information as necessary to assist in making a determination of the application. Upon determination, EPA will publish a Notice of Determination in the **Federal Register** and add the method to a list provided to EPA regions and the public.

Burden Statement: Public reporting burden for this collection of information is estimated to average 150 hours per response, with an average of 434 hours per response for new methods and 20 hours per response for modifications to methods, including time for reviewing regulations, searching existing information sources, completing and reviewing the collection of information, and submitting the information to the EPA. Public recordkeeping burden is estimated to average 5 hours per recordkeeper, including time to store and maintain records.

Respondents: Applicants for reference or equivalent method determinations.

Estimated Number of Respondents: 9 reporters, 20 recordkeepers.

Frequency of Collection: On occasion.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1522 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2316), 401 M Street, SW., Washington, DC 20460.

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: October 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–27543 Filed 11–4–94; 8:45 am]

BILLING CODE 6560–50–F

[PF–614; FRL–4920–9]

E.I. DuPont De Nemours & Co., Inc.; Notice of Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from E.I. DuPont De Nemours & Co., Inc., a petition to establish a pesticide tolerance for the herbicide rimsulfuron to be used on various raw agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6800.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from E.I. DuPont de Nemours & Co., Inc., Agricultural Products, Walkers Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19800-0038, a notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 1F4005 to amend 40 CFR part 180 to establish a tolerance for residues of the herbicide rimsulfuron (*N*-((4,6-dimethyoxypriminidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide) in or on the raw agricultural commodities corn, field, forage at 0.1 part per million (ppm), corn, field, fodder at 0.1 ppm, corn, field, grain at 0.1 ppm, and potatoes, tubers at 0.1 ppm. The analytical method is HPLC with UV detection. (PM-25)

Authority: 21 U.S.C. 346a and 348.

Dated: November 1, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–27629 Filed 11–3–94; 1:10 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 31, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should

contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0034.
Title: Application for Construction Permit for Noncommercial Educational Broadcast Station.
Form Number: FCC Form 340.
Action: Revision of a currently approved collection.
Respondents: Non-profit institutions.
Frequency of Response: On occasion reporting requirement.
Estimated Annual Burden: 269 responses; 89.38 hours average burden per response; 24,043 hours total annual burden.
Needs and Uses: FCC Form 340 is used to apply for authority to construct a new noncommercial educational AM, FM and TV broadcast station, or to make changes in the existing facilities of such a station. On 9/18/92, the Commission adopted a Memorandum Opinion and Order (MO&O) in the matter of Policy Regarding Character Qualifications in Broadcast Licensing which eliminated the requirement that broadcast applicants report pending litigation. The form is being revised to reflect the new policy. The form is also being revised to add a column to the terrain and coverage data for applicants who apply for a noncommercial educational station on a commercial channel. Additionally, a paragraph has been added to the environmental question in the engineering sections of the form to clarify the information needed by the Commission. The data is used by FCC staff to determine whether the applicant meets basic statutory requirements to become a Commission licensee.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–27429; Filed 11–4–94; 8:45 am]
BILLING CODE 6712–01–F

FCC Announces Establishment of Dockets for Materials Filed in Connection With State Petitions for Authority To Regulate Commercial Mobile Radio Service Rates

September 22, 1994.

Pursuant to the Omnibus Budget Reconciliation Act of 1993,[1] eight states filed petitions for the authority to continue regulating the intrastate rates of mobile radio service providers. Because of the high volume of responsive comments, dockets have been established for pleadings regarding the state petitions. All future pleadings, including replies, regarding these state petitions, should reference the docket number assigned to the state petition in issue and should be filed with the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

The petitions, together with their corresponding new docket numbers (and, for reference, the former file numbers), are as follows:

1. Petition of Public Utilities Commission, State of Hawaii, for Authority to Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii, formerly PR File No. 94–SP1, now PR Docket No. 94–103.

2. Petition to Extend State Authority over Rate and Entry Regulation of All Commercial Mobile Radio Services, filed by the Arizona Corporation Commission, formerly PR File No. 94–SP2, now PR Docket No. 94–104.

3. Petition of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service Rates (accompanied by Request for Proprietary Treatment of Documents Used in Support of Petition to Retain Regulatory Authority over Intrastate Cellular Service Rates), formerly PR File No. 94–SP3, now PR Docket No. 94–105.

4. Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut (filed August 9, 1994), formerly PR File No. 94–SP4, now PR Docket No. 94–106.

5. Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana, formerly PR File No. 94–SP5, now PR Docket No. 94–107.

6. Petition to Extend Rate Regulation Filed by the New York State Public Service Commission, formerly PR File No. 94–SP6, now PR Docket No. 94–108.

7. Statement of the Public Utilities Commission of Ohio's Intention to Preserve its Right for Future Rate and Market Entry Regulation of Commercial Mobile Radio Services, formerly PR File No. 94–SP7, now PR Docket No. 94–109.

8. State Petition for Authority to Maintain Current Regulation of Rates and Market Entry (Sect. 20.12), filed by the Public Service Commission of Wyoming, formerly PR File No. 94–SP8, now PR Docket No. 94–110.

By the action of the Acting Chief, Land Mobile and Microwave Division, Private Radio Bureau. For further information contact Gina Harrison or Julia Kogan, Private Radio Bureau, (202) 632–7125.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–27431 Filed 11–4–94; 8:45 am]
BILLING CODE 6712–01–M

[1] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, Title VI, § 6002(b)(2), 107 Stat. 312, 392 (1993) amending Section 332(c)(3) of the Communications Act.

[DA 94–1203]

Comments Invited On Florida Public Safety Plan Amendment

October 28, 1994.

On May 10, 1990, the Commission accepted the Public Safety Plan for Florida (Region 9). On August 3, 1994, Region 9 submitted a proposed amendment to its plan that would, in part, revise the current channel allotments and extend the current application benchmark date. Because the proposed amendment is a major change to the Region 9 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before December 7, 1994 and reply comments on or before December 22, 1994. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, D.C. 20554 and should clearly identify them as submissions to Gen. Docket 90–119 Florida-Public Safety Region 9.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–27427; Filed 11–4–94; 8:45 am]
BILLING CODE 6712–01–F

[Report No. 2039]

Petition for Reconsideration and Clarification of Actions in Rulemaking Proceedings

November 2, 1994.

Petition for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section

1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed November 22, 1994. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Mamou and Jonesville, Louisiana) (MM Docket No. (94–51, RM–8466).

Number of Petition Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27430 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Rayburn Jerome Fisher, Jr.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 21, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Rayburn Jerome Fisher, Jr., Atlanta, Georgia; to acquire an additional 6.67 percent, for a total of 10.54 percent, of the voting shares of Metro Financial Corporation, Atlanta, Georgia, and thereby indirectly acquire Metro Bank, Atlanta, Georgia.

Board of Governors of the Federal Reserve System, November 1, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27498 Filed 11-4-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Open Season; Thrift Savings Plan Elections

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) in its regulation at 5 CFR 1600.2 provides that notice will be given of the beginning and ending dates of all open seasons (as defined at 5 CFR 1600.1) which are subsequent to the open season ending on July 31, 1987. The Board's next open season will commence on November 15, 1994, and will end on January 31, 1995. The election period (as defined at 5 CFR 1600.1) covered by this open season extends from January 1, 1995 through January 31, 1995.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 942–1661.

Dated: October 27, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–27527 Filed 11–4–94; 8:45 am]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Renovation of the U.S. Plaza at the Rainbow Bridge, Niagara Falls, New York; Notice of Draft Environmental Impact Statement Availability and Public Hearing

AGENCY: General Services Administration (GSA).

ACTION: Notice of Draft Environmental Impact Statement (DEIS) Availability and Public Hearing.

SUMMARY: A DEIS concerning the proposed renovation of the U.S. plaza at the Rainbow Bridge has been prepared by the GSA under Section 102(2)(C) of the National Environmental Policy Act (NEPA). The DEIS has been released for public review and comment, and a public hearing is scheduled.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Sneed, Director, Planning Staff, U.S. General Services Administration, Public Buildings Service, 26 Federal Plaza, Room 1609, New York, NY 10278, (212) 264–3581.

SUPPLEMENTARY INFORMATION: A Draft Environmental Impact Statement (DEIS) has been prepared to evaluate the potential impacts of the proposed renovation of the U.S. plaza at the Rainbow Bridge in Niagara Falls, New York. The GSA is acting as NEPA lead agency in this project, which will be funded and constructed by the Niagara Falls Bridge Commission (NFBC). The construction of new inspection and toll booths, new office spaces, and a widened bridge approach at the existing site are proposed. Existing plaza facilities, which do not provide sufficient space for tenant agencies, will be demolished. Upon its completion, the new plaza would provide approximately 49,800 net square feet (nsf) of interior and exterior space, which will be leased to GSA for the essential functions of the U.S. Immigration and Naturalization Service (INS) and the U.S. Customs Service.

The DEIS for this project contains detailed background information, an overview of the alternatives considered, a description of the affected environment, and a discussion of the project's potential environmental impacts. Potential impacts identified include visual impacts to the Niagara Reservation—a National Historic Landmark, the demolition of National Register-eligible plaza buildings, and higher peak hour traffic volumes on streets within the City of Niagara Falls. Mitigation measures have been proposed for these potential impacts. Impacts to the Reservation will be mitigated through adherence to review procedures outlined in Section 106 of the National Historic Preservation Act of 1966 and Section 6(f) of the Land and Water Conservation Fund (L&WCF) Act. The demolition of National Register eligible plaza buildings will be mitigated by recording the buildings to Historic American Buildings Survey (HABS) standards prior to demolition, as documented in the National Park Service's "Schedule of Documentation for Recording of Rainbow Toll Plaza." Increasing the maximum green time at two intersections near the bridge has been recommended to accommodate traffic volumes associated with the renovated plaza. More importantly, the elimination of bridge queues from city streets will significantly improve traffic operations at intersections adjacent to the bridge.

The DEIS for the project was released on November 2, 1994, to Federal, state, and local agencies, interested persons,

and community groups. The DEIS and supporting documents are available for public review at the locations listed below:

Niagara Falls Public Library, Earl W. Brydges Library Building, 1425 Main Street, Niagara Falls, NY

General Services Administration, Public Buildings Service, 26 Federal Plaza, Room 1609, New York, NY 10278

Written comments are invited and may be submitted to GSA at the informational contact listed in this notice December 19, 1994. A public hearing will be held to formally present the DEIS to the public and to provide an additional opportunity for public comment.

Public Hearing

Date: November 29, 1994.

Time: 7:00 p.m.

Place: Orin Lehman Visitor's Center, Niagara Reservation, Niagara Falls, NY.

Purpose: To receive comments concerning the potential environmental impacts of the proposed plaza renovation.

Instructions: Those interested in commenting orally at the public hearing may register at the desk outside the auditorium on the night of the hearing. Speakers will be heard in the order they register. Each speaker will be allotted a maximum of five (5) minutes to allow all who are interested the opportunity to speak. Oral comments may be accompanied by written statements or by an additional oral presentation after the list of registered speakers is complete. A verbatim transcript will be prepared and will be summarized in the Final Environmental Impact Statement.

Dated: October 26, 1994.

Karen R. Adler,

Regional Administrator.

[FR Doc. 94–27420 Filed 11–4–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D–0243]

Certification for Exports; Revised Compliance Policy Guide; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the Federal Register of September 7, 1994 (59 FR 46257). The document announced the availability of a revised Compliance Policy Guide (CPG) 7150.01 entitled, "Certification for Exports." The document was published with a incorrect docket number in the heading. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20879, 301–443–2994.

In FR Doc. 94–22033, appearing on page 46257 in the Federal Register of Wednesday, September 7, 1994, the following correction is made:

On page 46257, in the first column, the docket number "94N–0243" is corrected to read "94D–0243".

Dated: November 1, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–27555 Filed 11–4–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Kansas State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 30, 1994, in Room 111, New Federal Office Building, 601 East 12th Street, Kansas City, Missouri 64106–2808, to reconsider our decision to disapprove Kansas SPA 93–25.

CLOSING DATES: Requests to participate in the hearing as a party must be received by the presiding officer by (15 days after publication).

FOR FURTHER INFORMATION CONTACT: Stan Katz, Presiding Officer, Groundfloor, Meadowwood East Building, 1849 Gwynn Oak Avenue, Baltimore, Maryland 21207, Telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider our decision to disapprove Kansas State plan amendment (SPA) number 93–25.

Section 1116 of the Social Security Act (the Act) and 42 CFR, Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The State of Kansas submitted SPA 93–25 to increase the copayment amount for general hospital inpatient services and inpatient free standing psychiatric facility services from $25 to $325 per admission.

The issues are whether Kansas SPA 93–25 adheres to the Federal law at section 1902(a)(14) of the Act (referencing section 1916 of the Act), as implemented in the regulations at 42 CFR section 447.54(c) and section 1902(a)(19) of the Act.

Section 1902(a)(14) of the Act requires a Medicaid State plan to provide that premiums, deductions, cost sharing or similar charges be imposed only as provided in section 1916 of the Act. Pursuant to section 1916 of the Act, a State may impose nominal cost-sharing payments, such as deductibles, coinsurance, copayments, or similar cost-sharing charges on certain Medicaid recipients for some services. Current Medicaid regulations at 42 CFR section 447.54(c) define "nominal" for institutional services, as the maximum deductible, coinsurance, or copayment charge for each admission that does not exceed 50 percent of the payment the State makes for the first day of care in the institution.

HCFA believes the State's proposed copayment does not conform to the regulation because the copayment is not institution and admission specific. Furthermore, the proposed $325 copayment amount is a fixed Statewide amount. The regulation limits the State plan to the maximum copayment amount per admission. Kansas believes that the regulations do not require institution and admission specific copayments. In addition, Kansas indicates that Federal regulations at 42 CFR 447.55(a) specifically allow the State to set a standard, or fixed, copayment amount for any service.

Section 1902(a)(19) of the Act provides that the State plan must include safeguards to assure that services will be provided in a manner consistent with the best interests of the recipients. HCFA believes the State has neglected to include any analysis or data which determines whether any Medicaid recipients were dissuaded from even seeking the services because of the proposed copayment. Further, if recipients are deterred from seeking necessary medical services because they are unable to pay the copayment amount, regardless of the fact that such services could not be denied, a copayment amount such as Kansas proposed cannot be in the best interests of the Medicaid recipients. Kansas believes there is no regulatory requirement that a State undertake studies or surveys of the recipient population before it implements a copayment.

The notice to Kansas announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Donna L. Whiteman,
Secretary, Kansas Department of Social and Rehabilitation Services,
6th Floor, North Wing,
915 S.W. Harrison St.,
Topeka, KS 66612

Dear Ms. Whiteman: I am responding to your request for reconsideration of the decision to disapprove Kansas State Plan Amendment (SPA) 93–25.

Kansas submitted SPA 93–25 which would increase the copayment amount for the general hospital inpatient services and inpatient free standing psychiatric facility services from $25 to $325 per admission.

The issues are whether Kansas SPA 93–25 adheres to the Federal law at section 1902(a)(14) of the Social Security Act (the Act) (referencing section 1916 of the Act), as implemented in the regulations at 42 C.F.R. section 447.54(c), and section 1902(a)(19) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on November 30, 1994, in Room 111, New Federal Office Building, 601 East 12th Street, Kansas City, Missouri, 64106–2808. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 597–3013.

Sincerely,
Bruce C. Vladeck,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)
(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: October 31, 1994.

Bruce C. Vladeck,
Administrator, Health Care Financing Administration.

[FR Doc. 94–27495 Filed 11–4–94; 8:45 am]
BILLING CODE 4120–01–P

Public Health Service

National Toxicology Program; Chemicals (6) Nominated for Toxicological Studies; Request for Comments

SUMMARY: The National Toxicology Program (NTP) is soliciting public comments on six chemicals nominated for toxicological studies. These comments will assist the NTP in making informed decisions about whether to perform toxicological testing on these chemicals.

FOR FURTHER INFORMATION CONTACT: Dr. Errol Zeiger, AO–01; National Toxicology Program, NIEHS, P.O. Box 12233, Research Triangle Park, NC 127709; (919) 541–4482.

SUPPLEMENTARY INFORMATION: The NTP was established in 1978 as a cooperative effort within the Public Health Service of the Department of Health and Human Services to coordinate toxicology research and testing activities within the Department to provide information about potentially toxic chemicals to regulatory and research agencies and the public, and to strengthen the science base in toxicology. The chemical nomination and selection process remains integral to the effective operation and success of the NTP with respect to the testing of chemicals using current methodologies, the validation of new testing methodologies, and the evaluation of mechanisms of toxicity.

As part of the nomination and selection process, the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC) (formerly the Chemical Evaluation Committee [CEC]), composed of representatives from Federal agencies participating in the NTP, evaluates chemicals nominated to the Program and makes recommendations for study. Nominated chemicals which have been reviewed by the ICCEC are published in the **Federal Register** with request for comment. The purpose is to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this announcement will be reviewed by NTP technical staff for use in the further evaluation of the nominated chemicals. The NTP chemical nomination and selection process is summarized in the NTP FY 1993 Annual Report, pages 17–19.

On September 22, 1994, the ICCEC met to evaluate six chemicals nominated to the NTP for toxicological studies. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the types of toxicological studies recommended by the ICCEC.

Chemical	CAS registry No.	Committee recommendations
1. Dimethyl adipate.	627–93–0	-Carcinogenicity -Genotoxicity -Sensory irritation -Dermal subchronic -Reproductive and developmental effects (other than rat) -Neutrotoxicity -Metabolism and toxicity (using human upper respiratory tissues)
2. 2,3-Butanedione.	431–03–8	-Carcinogenicity -Metabolism -*In vivo* genotoxicity
3. 2,2'-Dipyridyl.	366–18–7	-No testing
4. Methyl styryl.	122–57–6	-Metabolism -Pharmacokinetics -*In vivo* genotoxicity -Mechanistic studies
5. N-Bromosuccinimide.	128–08–5	-No testing
6. 5-Nitroindazole.	5401–94–5	-No testing

The ICCEC also recommended that two chemicals, ecdysterone and 2,3-dichloropropylene, be removed from consideration for testing at this time

based on lack of evidence of human exposure with the understanding that these chemicals may be reconsidered at a later date if actual human exposure is demonstrated.

Interested parties are requested to submit pertinent information on all of the nominated chemicals. The following types of data are of particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential;

(2) Uses and resulting exposure levels, where known;

(3) Completed, ongoing and/or planned toxicological testing in the public or private sector including detailed experimental protocols and results; and

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing (by 30 days after date of publication) to Dr. Zeigler by mail or by FAX, (919) 541–4704. Any submissions received after the above date will be accepted and utilized if possible.

Dated: October 31, 1994.

Richard A. Griesemer,

Deputy Director, NIEHS.

[FR Doc. 94–27468 Filed 11–4–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program

National Toxicology Program (NTP) Board of Scientific Counselors' Meetings; Announcement of NTP Draft Technical Reports Projected for Public Review From November 1994 Through Summer 1996.

To earlier inform the public and allow interested parties to comment or obtain information on long-term toxicology and carcinogenesis studies prior to public peer review, the National Toxicology Program (NTP) again publishes in the **Federal Register** a current listing of draft Technical Reports projected for evaluation by the NTP Board of Scientific Counselor's Technical Reports Review Subcommittee during their next four meetings from November 1994 through the summer of 1996. We plan to continue updating the listing with announcements in the **Federal Register** once or twice a year. The next meeting date is November 29, 1994. Specific dates for 1995 and 1996 meetings will be established at a later time.

The attached Table 1 lists draft Technical Reports for long-term studies on chemicals within known or approximate dates of reviews and includes Chemical Abstracts Service (CAS) registry numbers, primary use, route of administration, species, exposure levels, and NTP report numbers (if assigned).

Technical Reports of short-term toxicity studies are currently reviewed by mail; however, when necessary may be reviewed in opening meetings. The attached Table 2 lists the draft Technical Reports of short-term toxicity studies tentatively projected for review by mail during 1994 and also includes Chemical Abstracts Service (CAS) registry numbers, primary use, route of administration, species, exposure levels, and NTP report numbers (if assigned).

These interested in having more information about any of the studies listed in this announcement, should contact Central Data Management as early as possible by telephone or by mail to: MD–A0–01, NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709 (919–541–3419). The program would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone 919/541–3971, will furnish final agendas and other program information prior to a meeting, and summary minutes subsequent to a meeting.

Attachments.

Dated: October 31, 1994.

Richard Griesemer,

Deputy Director, National Toxicology Program.

TABLE 1.—SUMMARY DATA FOR TECHNICAL REPORTS SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE FROM NOVEMBER 29, 1994 THROUGH SUMMER 1996

Chemical name/CAS number	Use	Route	Species	Exposure Levels	NTP TR No.
Chemicals Tentatively Scheduled for Peer Review November 29, 1994					
2,2-BIS (BROMOMETHYL)-1,3-PROPANEDIOL 3296-90-0.	FLAM	FEED	RM	R: 0, 2500, 5000, OR 10000 PPM; 70/GROUP M: 0, 312, 625, OR 1250 PPM; 60/GROUP.	452
ISOBUTYL NITRITE 542-56-3	INTR	INHAL	RM	R&M: 0, 37, 75, OR 150 PPM	448
NICKEL (II) OXIDE 1313-99-1	INTR	INHAL	RM	R: 0, .62, 1.25, OR 2.5 M: 0, 1.25, 2.5, OR 5.0 MG/M3; 50/GROUP.	451
NICKEL SULFATE HEXAHYDRATE 10101-97-0.	INTR	INHAL	RM	P: 0, 0.125, 0.25, OR 0.5 M: 0, .25, .5, OR 1.0 MG/M3; 50/GROUP.	454
NICKEL SUBSULFIDE 12035-72-2	ENVH	INHAL	RM	R: 0, 0.075, OR 0.15 M: 0, 0.6, OR 1.2 MG/M3; 50/GROUP.	453
TRIETHANOLAMINE 102-71-6	DTRG	SP	RMM	MR: 0, 32, 63, OR 125; FR: 0, 63, 125, OR 250; MM: 0, 200, 630, OR 2000; FM: 0, 100, 300, OR 1000 MG/KG; 60/GROUP.	449
Chemicals Tentatively Scheduled for Peer Review Summer 1995					
BUTYL BENZYL PHTHALATE 85-68-7	PLAS	FEED	RR	MR: 0, .3%, .6%, OR 1.2%; 60/GROUP FR: 0, .6%, 1.2%, OR 2.4%; 60/GROUP.	
T-BUTYLHYDROQUINONE 1948-33-0	FOOD	FEED	RMR	R&M: 0, 0.125, 0.25, OR 0.5% IN FEED; 70 RATS, 60 MICE.	
CODEINE 76-57-3	PHAR	FEED	RM	R: 0, 400, 800, OR 1600 M: 0, 750, 1500, OR 3000 PPM; 60/GROUP.	

TABLE 1.—SUMMARY DATA FOR TECHNICAL REPORTS SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE FROM NOVEMBER 29, 1994 THROUGH SUMMER 1996—Continued

Chemical name/CAS number	Use	Route	Species	Exposure Levels	NTP TR No.
1,2-DIHYDRO-2,2,4-TRITMETHYL-QUINOLINE (MONOMER) 147-47-7.	RUBR	SP	RMM	RATS: 0, 60, OR 100 MG/KG MICE: 0, 6, OR 10 MG/KG (CORE).	
1,2-DIHYDRO-2,2,4-TRIMETHYL-QUINOLINE (MONOMER) 147-47-7.	RUBR	SP	RM	RATS: 0, 36, 60, OR 100 MG/KG MICE: 0, 3.6, 6.0, OR 10.0 MG/KG.	
SALICYLAZOSUL-FAPYRIDINE 599-79-1 .	PHAR	GAV	RM	R: 84, 168, OR 337.5 MG/KG; 70/GROUP M: 675, 1350, OR 2700 MG/KG; 60/GROUP.	
SCOPOLAMINE HYDROBROMIDE TRIHYDRATE 6533-68-2.	PHAR	GAV	RMM	R&M: 0, 1, 5, OR 25 MG/KG; 70/GROUP DIET RESTRICTION MICE: 0 OR .25 MG/KG; 70/GROUP.	
Chemicals Tentatively Scheduled for Peer Review Fall 1995					
D & C YELLOW NO. 11 8003-22-3	DYE	FEED	R	RATS: 0, 0.05, 0.17, OR 0.5%; 60/GROUP.	
ETHYLBENZENE 100–41–4	RUBR	INHAL	RM	R&M: 0, 75, 250, OR 750 PPM (50/SEX/SPECIES/GROUP).	
MOLYBDENUM TRIOXIDE 1313-27-5	METL	INHAL	RM	R&M: 10, 30, OR 100 MG/M3; 50/SEX/SPECIES/GROUP.	
NITROMETHANE 75-52-5	FUEL	INHAL	RM	R: 0, 94, 188, OR 375 PPM; 50/GROUP M: 0, 188, 375, OR 750 PPM; 50/GROUP.	
TETRAFLUOROETHYLENE 116-14-3	FOOD	INHAL	RM	MICE & FR: 0, 312, 625, OR 1250 MR: 0, 156, 312, OR 625 PPM; 50/GROUP.	
Chemicals Tentatively Scheduled for Peer Review Summer 1996					
1-CHLORO-2-PROPANOL, TECHNICAL 127-00-4.	INTR	WATER	RM	R: 0, 150, 325, OR 650 PPM M: 0, 250, 500, OR 1000 PPM (50/SEX/GROUP).	
DIETHYANOLA-MINE 111-42-2	TEXL	SP	RM	MR: 0, 16, 32, OR 64 MG/KG; FR: 0, 8, 16, OR 32 MG/KG; MICE: 0, 40, 80, OR 160 MG/KG (50/SEX/SPECIES/GROUP).	
INTERFERON AD + AZT (AIDS INITIATIVE) INTAZTCOMB.	PHAR	SC&GV	MM	DUEL ROUTES WITH BOTH COMPOUNDS; AZT: 0, 30, 60, OR 120 (GAV) MG/KG; IFN: 500 OR 5000 UNITS 3X/WEEK.	
OXAZEPAM 604-75-1	PHAR	FEED	R	0, 625, 1250, 2500, 5000, OR 10000 PPM; 50/SEX/GROUP.	
PHENOLPHTHALEIN 77-09-8	PHAR	FEED	RM	R: 0, 1.2, 2.5, OR 5%; M: 0, 0.3, 0.6, OR 1.2% IN FEED (50/SEX/SPECIES/GROUP).	
PYRIDINE 110-86-1	SOLV	WATER	RMR	R: 0, 100, 200, OR 400 PPM MM: 0, 250, 500, OR 1000 PPM FM: 125, 250, OR 500 PPM MWR: 0, 100, 200, OR 400 PPM (50/SEX/GROUP).	
SODIUM XYLENESULFONATE 1300-72-7	DTRG	SP	RM	R: 0, 60, 120, OR 240 MG/KG M: 0, 182, 364, OR 727 MG/KG (50/SEX/GROUP).	
TETRAHYDROFURAN 109-99-9	SOLV	INHAL	RM	R&M: 0, 200, 600, OR 1800 PPM (50/SEX/SPECIES/GROUP).	
THEOPHYLLINE 58-55-9	PHAR	GAV	RM	R: 7.5, 25, OR 75 MG/KG; 50/GROUP FM: 7.5, 25, OR 75 MG/KG; 50/GROUP MM: 15, 50, OR 150 MG/KG; 50/GROUP.	

Abbreviations used in this report:
USE Primary Use Category:
COMT Contaminates and/or Impurities
COSM Cosmetics, Perfumes, Fragrances, Hair Preparations
DTRG Detergents and Cleansers
DYE As or in Dyes, Inks, and Pigments
ELEC In Electrical and/or Dielectric Systems
ENVH Environmental (Air/Water) Pollutants
FLAM Flame Retardants
FOOD Food, Beverages, or Additives
FUEL As or in Fuel or Oil products
HERB Herbicide(s)
IND Industrial Uses
INTR Chemical Intermediate or Catalyst
METL Metals or in Metal Products
PAPR as or in Paper or Paper Products
PEST Pesticides, General or Unclassified
PHAR Pharmaceuticals or Intermediates
PLAS As or in Plastics
PNT Paint Ingredient
RUBR Rubber Chemical
SOLV Vehicles and Solvents
TEXL In Manufacture of Textiles
ROUTE Route of Administration:
FEED Dosed-Feed
GAV Gavage
INHAL Inhalation
IP/IJ Intraperitoneal Injection
IVAG Intravaginal
MICRO Microencapsulation in Feed
SC&GV Subcutaneous Inj. + Gavage
SP Topical

WATER Dosed-Water SPEC Species: M = Mice
WB Whole Body Exposure R = Rats

TABLE 2.—SHORT-TERM TOXICITY STUDIES SCHEDULED FOR PEER REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS TECHNICAL REPORTS REVIEW SUBCOMMITTEE DURING FY 1995

CHEMICAL NAME/ CAS NO.	USE	ROUTE	SPECIES	EXPOSURE LEVEL	NTP TOX NO.
Short-Term Toxicity Studies Scheduled for Peer Review October 1994					
M-CHLOROANILINE 108–42–9/C61529B	INTR	GAV	RM	R&M 0, 10, 20, 40, 80, 160 MG/KG, 20/GRP (RATS); 10/GRP (MICE).	43
O-CHLOROANILINE 95–51–1/C91001	DYE	GAV	RM	R&M 0, 10, 20, 40, 80, & 160 MG/KG; 20/GRP (RATS); 10/GRP (MICE).	43
O-NITROTOLUENE 88–72–2/C62340C	RUBR	FEED	R	MALE R: 0, 0 ALTERED MICROFLORA 20/GRP; 5000 RPM 60/GRP; 5000 PPM ALTERED MICROFLORA 40/GRP.	44
O-TOLUIDINE HYDROCHLORIDE 636–21–5/C02335B.	DYE	FEED	R	O AND O ALTERED MICROFLORA; 20/GRP; 5000 PPM; 60/GRP.	44
1,1,1-TRICHLOROETHANE (Superfund Chemical) 71–55–6/C04626C.	SOLV	MICRO	RM	R&M: 0, 0.5, 1.0, 2.0, 4.0, AND 8.0% (10/S/S).	
Short-Term Toxicity Studies Scheduled for Peer Review November 1994					
CYCLOHEXANONE OXIME 100–64–1/C88047	PLAS	WATER	M	0, 625, 1250, 2500, 5000, OR 10000 PPM; 10/GROUP.	50
Halogenated Ethanes Class Study:					
1,2-DICHLORO-1,1-DIFLUOROETHANE 1649–08–7.	IND	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
1,2-DIFLUROR-1,1,2,2-TETRA CHLOROETHANE 76–12–0.	SOLV	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRAP.	45
HEXACHLOROETHANE 67–72–1	SOLV	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
PENTABROMOETHANE 75–95–6	IND	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
PENTACHLOROETHANE 76–01–7	SOLV	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP; FEMALE RATS 0, 1,24 MMOL/KG/DAY;.	45
1,1,1,2-TETRA BROMOETHANE 630–16–0	IND	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
1,1,2,2-TETRA BROMOETHANE 79–27–6	FLAM	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
1,1,1,2-TETRA CHLOROETHANE 630–20–6	INTR	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
1,1,2,2-TETRACHLOROETHANE 79–34–5	SOLV	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
1,1,1-TRICHLOROETHANE 71–55–6	SOLV	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
1,1,1-TRICHLORO-2,2,2-TRIFLUOROETHANE 354–58–5.	IND	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
METHYL ETHYL KETOXIME 96–29–7/C88009.	PNT	WATER	RM	R&M: 0, 625, 1250, 2500, 5000, OR 10000 PPM; 10/GROUP.	51
3,3',4,4'-TETRACHLOROA ZOBENZENE 14047–09–7/C88148.	HERB	GAV	RM	R&M: 0, 0.1, 1.0, 3.0, 10, OR 30 MG/KG BODY WEIGHT (M&F; 10/GROUP).	
3,3',4,4'-TETRACHLO- ROAZOXYBENZENE 21232–47–3/C88149.	COMT	GAV	RM	R&M: 0, 0.1, 1.0, 3.0, 10, OR 30 MG/KG BODY WEIGHT (M&F 10/GROUP).	
Short-Term Toxicity Studies Scheduled for Peer Review January 1995					
CIS & TRANS 1,2-DICHLOROETHYLENE (Superfund Chemical) 540–59–0/C56031.	SOLV	MICRO	RM	R&M: 0, 3175, 6250, 12500, 25000, OR 50000 (5/SEX/SPECIES/GROUP).	
CIS-1,2-DICHLOROETHYLENE (Superfund Chemical) 156–59–2/C51581B.	SOLV	MICRO	RM	R&M: 0, 3175, 6250, 12500, 25000, OR 50000 (5/SEX/SPECIES/GROUP).	
TRANS-1,2-DICHLOROETHYLENE (Superfund Chemical) 156–60–5/C54591B.	SOLV	MICRO	RM	R&M: 0, 3175, 6250, 12500, 25000, OR 50000 PPM (5/SEX/SPECIES/GROUP).	

TABLE 2.—SHORT-TERM TOXICITY STUDIES SCHEDULED FOR PEER REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS TECHNICAL REPORTS REVIEW SUBCOMMITTEE DURING FY 1995—Continued

CHEMICAL NAME/ CAS NO.	USE	ROUTE	SPECIES	EXPOSURE LEVEL	NTP TOX NO.
TRANS-1,2-DICHLOROETHYLENE (Superfund Chemical) 156–60–5 /C54591C.	SOLV	GAV	RM	R: 0, 125, 250 OR 500 MG/KG M: 0, 320, 640, OR 1280 MG/KG (5/SEX/SPECIES/GROUP).	
DIPROPYLENE GLYCOL 25265–71–8/C88031	INTR	WATER	RM	R&M: 0, 0.5, 1.0, 2.0, 4.0 OR 8.0% (10/S/S).	
GLYOXAL DIHYDRATE 107–22–2/C88038	PAPR	WATER	RM	R&M: 0, 1, 2, 4, 8, OR 16 MG/ML (10S/S).	
1,1,2,2-TETRACHLOROETHANE (Superfund Chemical) 79–34–5/C03554B.	SOLV	MICRO	RM	R&M: 0, 0.625, 1.25, 2.5, 5.0, OR 10.0% (5/SEX/SPECIES/GROUP).	
1,1,2,2-TETRACHLOROETHANE (Superfund Chemical) 79–34–5/C03554C.	SOLV	GAV	RM	R: 0, 135, 270, OR 540 MG/KG M: 0, 337.5, 675, OR 1350 MG/KG (50/S/S).	
Short-Term Toxicity Studies Scheduled for Peer Review April 1995					
METHAPYRILENE HYDROCHLORIDE 135–23–9/C55550E.	PHAR	FEED	R	MALE RATS: 0, 50, 100, 250, 1000 PPM; 40/GRP.	46

Abbreviations used in this report:
USE Primary Use Category:
COMT Contaminates and/or Impurities
COSM Cosmetics, Perfumes, Fragrances, Hair Preparations
DTRG Detergents and Cleaners
DYE As or in Dyes, Inks, and Pigments
ELEC In Electrical and/or Dielectric Systems
ENVH Environmental (Air/Water) Pollutants
FLAM Flame Retardants
FOOD Food, Beverages, or Additives
FUEL As or in Fuel or Oil Products
HERB Herbicide(s)
IND Industrial Uses
INTR Chemical Intermediate or Catalyst
METL Metals or in Metal Products
PAPR As or in Paper or Paper Products
PEST Pesticides, General or Unclassified
PHAR Pharmaceuticals or Intermediates
PLAS As or in Plastics
PNT Paint Ingredient
RUBR Rubber Chemical
SOLV Vehicles and Solvents
TEXL In Manufacture of Textiles
ROUTE Route of Administration:
FEED Dosed-Feed
GAV Gavage
INHAL Inhalation
IP/IJ Intraperitoneal Injection
IVAG Intravaginal
MICRO Microencapsulation in Feed
SC&GV Subcutaneous Inj. + Gavage
SP Topical
WATER Dosed-Water
WB Whole Body Expsoure
SPEC Species:
R=Rats
M=Mice

[FR Doc. 94–27467 Filed 11–4–94; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. D–94–1078; FR–3812–D–01]

Redelegation and Designation of Authority

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Notice of redelegation an designation of authority.

SUMMARY: This notice redelegates authority from the Assistant Secretary for Housing—Federal Housing Commissioner to the Associate Deputy Assistant Secretary for Single Family Housing, who retains and redelegates this authority to the Director, Officer of Insured Single Family Housing, who retains and redelegates it to the Deputy Director, Office of Insured Single Family Housing, who retains and redelegates it to the Director, Single Family Servicing Division, who retains and redelegates it to O. Thomas Miles, William C. Ingleton, Richard E. Harrington, Mary Louis Hinchey, and James Sorrentino. Each of the named positions and individuals is redelegated the authority to sign limited powers of attorney whereby, in each case, they grant on behalf of the Department of Housing and Urban Development (HUD), to a specified party, the power and authority to carry out certain functions on behalf of HUD pertaining to the sale and assignment of a mortgage by HUD.

EFFECTIVE DATE: October 26, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph C. Bates, U.S. Department of Housing and Urban Development, 451 7th Street, SW, room 9178, Washington, DC 20410, telephone (202) 708–3680. A telecommunications device for the hearing-impaired (TDD) is available at 202–708–4594. [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: On occasion, HUD sells Secretary-held single family mortgages that it has acquired pursuant to various statutes and regulations. When a mortgage is sold by HUD, the mortgage must be assigned to the purchaser and the assignment must be recorded in one of the approximately 650 jurisdictions throughout the country where the sale has taken place. In addition, there are other responsibilities which must be carried out on behalf of HUD. HUD needs assistance in carrying out these functions incident to each mortgage sale. To obtain such assistance, HUD provides individuals, corporations and other entities throughout the country with limited powers of attorney so that they may execute and record each assignment on behalf of HUD, and engage in other responsibilities as specified.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates authority as follows:

Section A. Authority Redelegated

The Associate Deputy Assistant Secretary for Single Family Housing is redelegated the power and authority to grant in writing to individuals, corporations or other entities the limited power of attorney to act on HUD's behalf, in signing documents and carrying out other duties as described in the limited power of attorney, relating to the sale of Secretary-held single family mortgages from HUD to those person(s) or other entities listed in the limited power of attorney. The Associate Deputy Assistant Secretary for Single Family Housing retains this power and authority, and redelegates it to the director, Office of Insured Single Family Housing, who retains and redelegates it to the Deputy Director, Office of Insured Single Family Housing, who retains and redelegates it to the Director, Single Family Servicing Division, who retains and redelegates it to O. Thomas Miles, William C. Ingleton, Richard E. Harrington, Mary Louis Hinchey, and James Sorrentino.

Section B. No Authority To Redelegate

The authority granted pursuant to Section A., above, may not be further redelegated pursuant to this redelegation.

Authority: Sec. 7(d), Department of Housing and Urban Development Act [42 U.S.C. 3535(d)].

Dated: October 26, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–27530 Filed 11–4–94; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–05–1610–00]

Arizona: Availability of the Proposed Yuma District (Havasu) Resource Management Plan Amendment and Final Environmental Assessment, Yuma District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Yuma District (Havasu) Resource Management Plan Amendment and Final Environmental Assessment, Yuma District.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976 and section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared an amendment and environmental assessment to its Yuma District Resource Management Plan.

The management actions prescribed in the preferred alternative include (a) additional lands open for terminal utility distribution line right-of-way applications; (b) additional lands available for disposal; (c) an additional off-highway vehicle area; and (d) native plant salvage.

The document contains procedures for protesting the Amendment or any part of it. These procedures can also be found in the Code of Federal Regulations 43 CFR 1610.5–2.

SUPPLEMENTARY INFORMATION: A limited number of copies of the Amendment and Environmental Assessment are available upon request to the Yuma District Manager, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365. There are also copies available for review at the above location.

EFFECTIVE DATE: The protest period will begin upon publication of this notice in the **Federal Register** and run for 30 days, after which the decision will become final. Except for any portions under protest, the BLM's Arizona State Director may approve the Amendment 30 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Planning and Environmental Coordinator Dave Curtis, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (602) 726–6300.

This notice is published under authority found in 43 CFR 1610.2(c).

Dated: October 27, 1994.

Michael A. Taylor,

Associate District Manager.

[FR Doc. 94–27501 Filed 11–4–94; 8:45 am]

BILLING CODE 4310–32–P

Fish and Wildlife Service

The Silvio Conte National Fish and Wildlife Refuge Advisory Committee: Establishment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Director of the Northeast Region of the Fish and Wildlife Service is announcing the establishment of the Silvio Conte National Fish and Wildlife Refuge Advisory Committee. The purpose of the Committee is to assist the Secretary on community outreach and education programs that further the purposes of the Refuge.

DATES: The Charter was filed on March 1, 1993, under The Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Further information regarding the Committee may be obtained from Mr. Lawrence Bandolin, Fish and Wildlife Service, 38 Avenue A, Turners Falls, MA 01376, telephone 413/863–0209.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act. Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is establishing the Silvio Conte National Fish and Wildlife Refuge Advisory Committee.

The Committee will consist of no more than 15 voting members appointed by the Secretary of the Interior to assure a balanced, cross-sectional representation of public and private sector organizations. The Committee shall consist of representatives from the following organizations:

(1) four members, including one from each of the affected States, to be recommended by the Governor of each State as representing the cities or towns bordering the Connecticut River and its tributaries;

(2) four members, including one from each of the affected States, to be recommended by the Governor of each State as representing State agencies with responsibility for conservation or water quality programs;

(3) four members, including one from each of the affected States, to be appointed from recommendations made by the Governor of that affected State, who shall represent nonprofit conservation organizations or citizen groups with direct interest in the purposes of the refuge;

(4) one member of the Long Island Sound Management Conference; and

(5) two members to be designated by the Secretary, including one who represents the energy and commerce interests associated with the Connecticut River.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act.

CERTIFICATION: I hereby certify that the establishment of the Silvio Conte National Fish and Wildlife Refuge Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities as defined in Federal laws including, but not restricted to the Silvio O. Conte

National Fish and Wildlife Refuge Act, The Fish and Wildlife Act of 1956, the Land and Water Conservation Fund Act, the Migratory Bird Conservation Act, the Emergency Wetlands Resource Act, the North American Wetlands Conservation Act, the National Wildlife Refuge System Administration Act, the Refuge Recreation Act, the Federal Advisory Committee Act and in furtherance of the Secretary of the Interior's statutory responsibilities for administration of the Fish and Wildlife Service mission to conserve, protect, and enhance fish, wildlife, and habitats for the continuing benefit of the American people (Fish and Wildlife Act of 1956). The Committee will assist the Secretary and the Department of the Interior by providing advice on community outreach and education projects that further the purposes of the refuge.

Dated: October 31, 1994.

Cathy Short,

Acting Regional Director, Region 5, Fish and Wildlife Service.

[FR Doc. 94–27477 Filed 11–4–94; 8:45 am]

BILLING CODE 4310–55–P

Silvio Conte National Fish and Wildlife Refuge Advisory Committee Meeting

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of The Federal Advisory Committee Act, this notice announces a meeting of the Silvio Conte National Fish and Wildlife Refuge Advisory Committee established under the authority of The Silvio O. Conte National Fish and Wildlife Refuge Act.

The meetings are open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration. Summary minutes of meeting will be maintained in the office of the Coordinator for the Silvio Conte National Fish and Wildlife Refuge Advisory Committee at 38 Avenue A, Turners Falls, MA 01376 , and will be available for public inspection during regular business hours (8:30–4:00) Monday through Friday within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

DATE: The Silvio Conte National Fish and Wildlife Refuge Advisory Committee will meet from 10:00 a.m. to 2:00 p.m., Tuesday, December 6, 1994.

PLACE: The meeting will be held at the Northeast Regional Office, 300 Westgate Center Drive, Hadley, Massachusetts.

AGENDA: This will be the initial meeting of the Silvio Conte National Fish and Wildlife Refuge Advisory Committee since the Secretary of the Interior signed the Committee Charter. Committee members will elect a chairperson, establish operating procedures, and discuss outreach and education strategies.

FOR FURTHER INFORMATION CONTACT: For further information individuals may contact the Committee Coordinator Lawrence Bandolin at 413/863–0209, Coordinator, Silvio Conte National Fish and Wildlife Refuge Advisory Committee, Fish and Wildlife Service.

Dated: October 31, 1994.

Cathy Short,

Acting Regional Director, Region 5, Fish and Wildlife Service.

[FR Doc. 94–27478 Filed 11–4–94; 8:45 am]

BILLING CODE 4310–55–P

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet on December 14 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be ranked and submitted to the Migratory Bird Conservation Commission with recommendations for funding. The meeting is open to the public.

DATES: December 14, 1994, 9:00 a.m.

ADDRESSES: The meeting will be held in the Dirksen Senate Office Building, 1st and C Streets, NE., Room 562, Washington, DC 20510. The North American Wetlands Conservation Council Coordinator is located at U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Streeter, Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (P.L. 101–233, 103 Stat. 1968, December 13, 1989), the North American Wetlands Conservation Council is a Federal-State-Private body which meets three times each year to consider wetland acquisition, restoration, and enhancement conservation projects for recommendation to and final approval by the Migratory Bird Conservation Commission. Proposals from State and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: October 21, 1994.

Richard N. Smith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–27500 Filed 11–4–94; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32195]

Southern Electric Railroad Company—Construction Exemption—Effingham County, Georgia

The Southern Electric Railroad Company (SER) has petitioned the Interstate Commerce Commission (Commission) for authority to construct and operate a 2.5 mile rail line in Effingham County, Georgia. The Commission's Section of Environmental Analysis (SEA) has prepared its Environmental Assessment (EA) which concludes that this proposal would not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed construction and operation conditions requiring Southern Electric Railroad Company to implement the mitigation contained in the EA. The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider any comments received in response to the EA in making its final recommendation to the Commission.

Comments (an original and 10 copies) and any questions regarding this Environmental Assessment should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, D.C. 20423, the attention of John O'Connell (202) 927–6228. Requests for copies of the EA should also be directed to Mr. O'Connell.

Date made available to the public: November 4, 1994.

Comment due date: December 5, 1994.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 94–27494 Filed 11–4–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32604]

Southern Pacific Transportation Company—Trackage Rights Exemption—San Mateo County Transit District

San Mateo County Transit District (Sam Trans) has agreed to grant overhead trackage rights to Southern Pacific Transportation Company (SPT) over 10.83 miles of rail line of its Dumbarton Branch, from milepost 26.16 at Redwood Jct., CA, to milepost 36.99 at Newark, CA.[1] The trackage rights will permit SPT to continue providing common carrier freight service on the Dumbarton Branch. The trackage rights were to become effective on or after October 31, 1994.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, One Market Plaza, Room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: October 31, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–27493 Filed 11–4–94; 8:45 am]

BILLING CODE 7035–01–P

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[1] Sam Trans acquired the line from SPT pursuant to an exemption granted in *San Mateo County Transit District—Purchase Exemption—Southern Pacific Transportation Company*, Finance Docket No. 32551 (ICC served Sept. 19, 1994).

[2] Under 49 CFR 1180.4(g), a verified notice of exemption must be filed with the Commission at least one week before the transaction is consummated. Because the notice of exemption was not filed until October 24, 1994, consummation should take place on or after October 31, 1994, rather than October 30, 1994, as indicated in the verified notice of exemption. Applicant's representative has confirmed that the correct consummation date is on or after October 31, 1994.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) COPS Fast Application.

(2) Office of Community Oriented Policing Services.

(3) On Occasion.

(4) State or local governments. The application will be used to apply for police hiring grants by state and local law enforcement agencies serving populations under 50,000.

(5) 5,000 respondents @ .91 hour per response.

(6) 4,950 annual burden hours.

(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: October 25, 1994.

Don Wolfrey,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 94–26881 Filed 11–4–94; 8:45 am]

BILLING CODE 4410–21–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Fuels and Lubricants for Clean Heavy Duty Diesel Engines

Notice is hereby given that, on September 1, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Chevron Research & Technology Company, Richmond, CA; Elf Antar France, Lyon, FRANCE; Lubrizol Corporation, Wickliffe, OH; Texaco, Inc., Glenham, NY and its general areas of planned activities are to determine the fuel and lubricant sensitivities in terms of emissions, reliability and durability characteristics of current, developing and future fuels and lubricants in 1998 and beyond engines through (1) testing fuels representative of current and future diesel fuels in two different heavy duty diesel engine to evaluate the interaction of the fuels, the lubricants, the emissions control technologies and the engine technologies; (2) performing detailed hydrocarbon composition analyses of the test fuels; (3) performing lubricant studies to determine the effect of advanced engine and emissions control technologies on lubricant degradation as well as the effects of lubricant properties on lube oil consumption rates in the two diesel engines.

Membership in this venture remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–27418 Filed 11–4–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993, Clean Heavy Duty Diesel Engine Development (SwRI)

Notice is hereby given that, on August 15, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership and project status of the Clean Heavy Duty Diesel Engine Development cooperative research project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the participants have agreed to extend the period of performance from April 1, 1993 to March 31, 1995; Isuzu Motors, Ltd. and Isuzu Advanced Engineering Center, Ltd. have withdrawn from participation in the project effective April 1, 1994; and the planned activities have been expanded to include research related to late cycle enhanced mixing in a heavy duty diesel engine being partially funded by the California Energy Commission.

No other changes have been made in either the membership or planned activity of the group research project. Membership in the project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On November 4, 1991, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 9, 1991 (56 FR 64275–64276).

The last notification was filed with the Department on July 1, 1992. A notice was published in the **Federal Register** on August 19, 1992 (57 FR 37557–37558). Additionally, a correction notice was published on October 27, 1992 (57 FR 48635).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–27419 Filed 11–4–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—X Consortium, Inc.

Notice is hereby given that, on June 14, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), X Consortium, Inc. (the "Corporation") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of the Corporation: Electronic Book Technologies, Inc., Providence, RI; Megatek Corp., San Diego, CA; M3i Systems, Inc., Montreal, Quebec, Canada; VisiCom Laboratories, Inc., San Diego, CA; and X Inside, Inc., El Cerrito, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Corporation intends to file additional written notifications disclosing all changes in membership.

On September 15, 1993, the Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 1993 (58 FR 59737). The last notification was filed with the Department on March 17, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 23, 1994 (59 FR 32464).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–27417 Filed 11–4–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–30,223]

Brown Shoe Company (Trenton Warehouse) Trenton, TN; Notice of Negative Determination Regarding Application for Reconsideration

By applications dated September 27 and 28, 1994 and October 3, 1994, the petitioners and others requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on September 15, 1994 and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners state that the workers should be certified because all of Brown Shoe company's facilities which have been closed are certified for TAA.

The worker adjustment assistance program is based on increased imports of articles that are like or directly competitive with those produced by the petitioning workers. The Department's denial of TAA for workers was based on the fact that they do not produce an article within the meaning of the Trade Act of 1974 and as such are out of scope from the worker adjustment assistance program.

Service workers (warehouse workers) are rarely certified for TAA when the company's manufacturing plants' certifications are based on company imports. The condition that must be met is that over half of the warehouse's activity must come from certified facilities. The findings, however, show that the major portion of Trenton's activity did not come from certified facilities but instead originated from company imports. Accordingly, increased company imports would have a positive employment effect on the subject workers, not an adverse one.

Other findings show that Trenton's warehousing was transferred to another domestic facility.

The worker adjustment assistance program was not intended to provide TAA to workers who are in some way related to import competition but only for those workers who produce an article and are adversely affected by increased imports of like or directly competitive articles which contributed importantly to sales or production and employment declines at the workers' firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27510 Filed 11–4–94; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,901; C.H. Hartshorn, Inc., Gardner, MA

TA–W–30,220; Chock Full O'Nuts, Greenwich Mill Div., Mebane, NC

TA–W–30,285; Donahue Oil Co., Mt. Carmel, IL

TA–W–30,213; Electro Magnetic Processes, Inc., Chatsworth, CA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,209; Meridian Oil, Inc., Fort Worth, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,261; Allen Bradley Co., Fairfield, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,260; C & T Machine Shop, Inc., Comanche, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,232; Sealy & Sterns & Foster Mattress Co., Miami, FL

TA–W–30,252; Sealy Connecticut, Inc., Oakville, CT

The investigation revealed that criteria (a) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–30,411; Harmon Automotive, Inc., Sevierville, TN

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,058; Lederle Laboratories, A Div., of American Cyanamid Co., Pearl River, NY

A certification was issued covering all workers separated on or after June 25, 1993.

TA–W–30,117; Information Handling Services, Englewood, CO

A certification was issued covering all workers separated on or after July 8, 1993.

TA–W–30,270; Crystie Fashions, Wyoming, PA

A certification was issued covering all workers separated on or after July 8, 1993.

TA–W–30,052; American Exploration Co., Houston, TX & Operating at Various Other Locations: A; New York, NY, B; AL, C; AR, D; KS, E; NM, F; ND, G; OK, H; TX

A certification was issued covering all workers separated on or after May 20, 1993.

TA–W–30,263; M.M. Fashions, Inc., Veneto Originals, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after August 11, 1993.

TA–W–30,264; London Fog Corp. (Londontown Corp), 3310 Carlin Park Circle, Baltimore, MD

A certification was issued covering all workers separated on or after August 15, 1993.

TA–W–30,267; Romic Enterprises, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after August 5, 1993.

TA–W–30,248; Kloehn Co., Inc., Brea, CA

A certification was issued covering all workers separated on or after August 22, 1993.

TA–W–30,230; Ansewn Footwear Co., Bangor, ME

A certification was issued covering all workers separated on or after August 5, 1993.

TA–W–30,257; Morton International Special Chemical Group, Beverly, MA

A certification was issued covering all workers separated on or after August 1, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group

eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased,

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00238; Aileen, Inc., Victoria & Flint Hill Plants Edinsburg, VA

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from Aileen, Inc. to Mexico or Canada during the period under investigation, nor did Aileen, Inc. import any ladies' sportswear from Mexico or Canada. A decision was made to shut down its Victoria & Flint Hill Plants, Edinburg, VA & transfer the plants' production to other existing foreign facilities. These foreign facilities are not located in Mexico or Canada.

NAFTA–TAA–00239; Ball Glass Container Corp., Okmulgee Plant, Okmulgee, OK

The investigation revealed that criteria (3) and criteria (4) was not met. A survey of major customers that decreased their purchases from the Okmulgee Plant of Ball Glass Containers Corp. revealed that none of the respondents purchased any imported glass containers from Mexico or Canada during the periods under investigation.

NAFTA–TAA–00237; Alliedsignal, Inc., Fluorine Products Div., Danville, IL

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from AlliedSignal, Inc. to Mexico or Canada during the period under investigation, nor did AlliedSignal, Inc. import from Mexico or Canada any articles that are like or directly competitive with R–11 and R–12. AlliedSignal's imports of fluorocarbons, which are competitive with R–11 and R–12, are from foreign sources other than Mexico or Canada. Workers at the Fluorine Products Div of AlliedSignal, Inc., Danville, IL were certified eligible to apply from trade adjustment Assistance on September 30, 1994. That certification remains in effect until September 30, 1996.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00236; Oxford Industries, Inc., Oxford Dress Div. ("Oxford of Lincolnton"), Lincolnton, GA

A certification was issued covering all workers of the Oxford Dress Division of Oxford Industries, Inc., (also known as "Oxford of Lincolnton"), Lincolnton, GA separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of October, 1994. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 31, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27508 Filed 11–4–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,286]

Dana Corporation; Pueblo, CO; Notice of Affirmative Determination Regarding Application for Reconsideration

On October 24, 1994, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on October 11, 1994 and will soon be published in the **Federal Register.**

The company submitted additional information showing a worker separations and increased imports in 1994.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 27th day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27506 Filed 11–4–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,942]

Fuelco; Denver, CO; Notice of Revised Determination on Reconsideration

On September 19, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice will soon be published in the **Federal Register.**

The workers were previously certified eligible to apply for trade adjustment assistance under petition TA–W–27,295 which expired on July 22, 1994.

Findings on reconsideration show decreased sales in the first 10 months of 1994 compared to the same period in 1993. Substantial worker separations occurred in 1994. A further finding shows that the subject firm is expected to close in the first quarter of 1995 when all workers will be laid off.

U.S. imports of crude oil and natural gas increased absolutely and relative to domestic shipments in the twelve month period beginning in April 1993 and ending in March 1994.

On reconsideration, the Department surveyed other customers of Fuelco and found that they reduced their purchases from Fuelco and increased their import purchases.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the Fuelco workers in Denver, Colorado were adversely affected by increased imports of articles like or directly competitive with natural gas or crude oil produced by Fuelco in Denver, Colorado.

All workers of Fuelco in Denver, Colorado who became totally or partially separated from employment on or after July 22, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27505 Filed 11–4–94; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-29,996]

U.S. Steel Mining Co., Inc.; Washington, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at U.S. Steel Mining Co., Inc., Washington, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-29,996; U.S. Steel Mining Co., Inc., Washington, Pennsylvania (October 27, 1994)

Signed at Washington, DC, this 28th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-27509 Filed 11-4-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 24th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Zenith Electronics Corp (IBEW)	Springfield, MO	10/24/94	09/27/94	30,416	TV cabinets, warehouse, truck drivers.
Zenith Electronics Corp (UEWA)	Chicago, IL	10/24/94	10/04/94	30,417	Sales Div., packaging, etc.
Toyota Vehicle Processors (Wkrs)	West Chicago, IL	10/24/94	10/10/94	30,418	Automobiles.
Stone Forest Industries (Wkrs)	Albany, OR	10/24/94	09/30/94	30,419	Plywood sheething, siding, flooring.
Spring City Knitting (Co)	Glendale, AZ	10/24/94	09/26/94	30,420	T-Shirts and men's underwear.
SRG Oil Corp (Wkrs)	Abilene, TX	10/24/94	10/11/94	30,421	Crude oil.
Rome Cable Corp (Wkrs)	Rome, NY	10/24/94	10/13/94	30,422	Copper wire and cable.
Penobscot Shoe Co (Co)	Old Town, ME	10/24/94	10/05/94	30,423	Women's casual shoes.
Tricon Timber, Inc (Wkrs)	Missoula, MT	10/24/94	10/12/94	30,424	Lumber.
Schoeneman Enterprises (ACTWU)	Belair, MD	10/24/94	10/14/94	30,425	Men's and ladies' rainwear.
Pro Group-Duckster Div. (Wkrs)	Lumberton, NC	10/24/94	10/11/94	30,426	Men's & ladies' knit golf shirts.
Keyes Kibre Co (UPW)	Hammond, IN	10/24/94	10/04/94	30,427	Rough molded products.
Kimberly-Clerk Corp (Wkrs)	Memphis, TN	10/24/94	09/29/94	30,428	Disposable diapers, kleenex & bath tissue.
Greenhill Petroleum Corp (Wkrs)	Lovington, NM	10/24/94	10/14/94	30,429	Oil and gas.
Flowline Div. (Co)	New Castle, PA	10/24/94	10/13/94	30,430	Stainless steel fittings.
Boben Manufacturing Co (Wkrs)	Boonville, MO	10/24/94	10/14/94	30,431	Shoe heels and toplifs.
CTV Garments (Wkrs)	Brooklyn, NY	10/24/94	10/11/94	30,432	Ladies coats.
IMC Magnetics (Wkrs)	Hauppauge, NY	10/24/94	10/12/94	30,433	Electric motors/fans.
Daytona Finishing (Wkrs)	Newark, NJ	10/24/94	10/07/94	30,434	Tin plated metal enclosures.
Abbott Co (UAW)	North Baltimore, OH	10/24/94	10/10/94	30,435	Wiring harnesses.
Amoco Corp (Wkrs)	Tulsa, OK	10/24/94	10/11/94	30,436	Oil and gas.
Solomon Sportswear (Wkrs)	East Tallassee, AL	10/24/94	10/04/94	30,437	Ladies' sportswear.
Flowline Division (Co)	Whiteville, NC	10/24/94	10/13/94	30,438	Stainless steel fittings.
Amoco Corp (Wkrs)	Houston, TX	10/24/94	10/11/94	30,439	Oil and gas.
Amoco Corp (Wkrs)	Denver, CO	10/24/94	10/11/94	30,440	Oil and gas.

[FR Doc. 94-27511 Filed 11-4-94; 8:45 am]
BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program: Certifications Under the Federal Unemployment Tax Act for 1994

On October 31, 1994, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to State unemployment funds to obtain certain credits for their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Dated: November 1, 1994.

Doug Ross,

Assistant Secretary of Labor.

The Honorable Lloyd Bentsen
Secretary of the Treasury, Washington, DC 20220.

Dear Secretary Bentsen: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending on October 31, 1994. One is required with respect to normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986, and the other is required with respect to additional tax credit by Section 3303 of the Code. Both certifications list all 53 jurisdictions.

In addition, due to the resolution of certain issues arising under section 3304(a) of the Internal Revenue Code of 1986, I hereby certify the State of New Jersey and its law for the 12-month periods ending on October 31 of 1990, 1991, 1992, and 1993.

Sincerely,

Robert B. Reich

Enclosures

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1994, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 1994.

Robert B. Reich,

Secretary of Labor.

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1994, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94-27503 Filed 11-4-94; 8:45 am]
BILLING CODE 4510-30-M

[NAFTA-00222]

Magnetek; Owosso, MI, Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the

Department of Labor issued a Certification Regarding Eligibility to apply for NAFTA-Transitional Adjustment Assistance on October 7, 1994 for workers of Magnetek in Owosso, Michigan. The certification notice was published in the **Federal Register** on October 21, 1994 (59 FR 53212).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The investigation findings show that there are two Magnetek facilities in Owosso, Michigan and that the certification should only cover the Main Street plant of Magnetek in Owosso, Michigan.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to NAFTA–00222 is hereby issued as follows:

All workers of the Main Street plant of Magnetek in Owosso, Michigan who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27587 Filed 11–4–94; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act, will meet on November 30, 1994, in Room N3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 8:30 a.m. and last all day.

Agenda items will include overviews of activities of both the Occupational Safety and Health Administration (OSHA) and the National Institute for Safety and Health (NIOSH), as well as reports from workgroups on Workplace Violence, Safety and Health Surveillance (Data), and New Strategies. Presentations will also be made on the following subjects; State Programs, development of an Ergonomic Protection Standard, OSHA Reform, and the development of an OSHA Action List by the Standards Planning Committee.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify Joanne Goodell before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak to the extent time permits, at the discretion of the Chair of the Advisory Committee. Individuals with disabilities who need special accommodations should contact Tom Hall by November 22 at the address indicated below.

An official record of the meeting will be available for public inspection through Tom Hall, Division of Consumer Affairs, Room N–3647, 200 Constitution Avenue, NW, Washington, DC, 20210, telephone 202–219–8615.

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue NW., Washington, DC, 20210, telephone 202–219–8021.

Signed at Washington, DC, this 1st day of Nov., 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–27504 Filed 11–4–94; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Multi-disciplinary Section) to the National Council on the Arts will be held on November 29–December 2, 1994. The panel will meet from 9:15 a.m. to 6:00 p.m. on November 29; from 9:00 a.m. to 6:00 p.m. on November 30–December 1 and from 9:00 a.m. to 4:30 p.m. in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:15 a.m. to 10:30 a.m. on November 29 for opening remarks and a general overview from 3:00 p.m. to 4:30 p.m. on December 2 for a policy discussion.

Remaining portions of this meeting from 10:30 a.m. to 6:00 p.m. on November 29 and from 9:00 a.m. to 6:00 p.m. on November 30–December 1 and from 9:00 a.m. to 3:00 p.m. on December 2 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: November 1, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–27492 Filed 11–4–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Folk and Traditional Arts Advisory Panel (Folk Arts Projects Section) to the

National Council on the Arts will be held on December 6–9, 1994. The panel will meet from 9:00 a.m. to 6:30 p.m. on December 6–8 and from 9:00 a.m. to 3:30 p.m. on December 9 in Room 720, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 1:30 p.m. to 3:00 p.m. on December 8 for a policy review.

The remaining portions of this meeting from 9:00 a.m. to 6:30 p.m. on December 6–7; from 9:00 a.m. to 1:30 p.m. and 3:00 p.m. to 6:30 p.m. on December 8; and from 9:00 a.m. to 3:30 p.m. on December 9 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of Section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 1, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–27490 Filed 11–4–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Design Challenge Section) to the National Council on the Arts will be held on November 29, 1994 from 9:00 a.m. to 5:00 p.m. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:00 p.m. to 5:00 p.m. for a policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 4:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 1, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–27489 Filed 11–4–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Commission Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on November 30–December 2, 1994. The panel will meet from 9:00 a.m. to 5:30 p.m. on November 30; from 9:00 a.m. to 6:30 p.m. on December 1; and from 9:00 a.m. to 3:00 p.m. on December 2 in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public on December 2 from 3:00 p.m. to 5:00 p.m. for a policy and guidelines review.

Remaining portions of this meeting from 9:00 a.m. to 5:30 p.m. on November 30; from 9:00 a.m. to 6:30 p.m. on December 1; and from 9:00 a.m. to 3:00 p.m. on December 2 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5439.

Dated: November 1, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–27491 Filed 11–4–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Nominations for Medical Visiting Fellows Program

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The Nuclear Regulatory Commission is inviting nominations of physicians, having expert qualifications in the medical specialty field of Radiation Oncology (Therapy), to apply for positions as Medical Visiting Fellows (Fellows). Others having expert qualifications in related fields such as Therapeutic Radiological Physics are also invited to apply.

EFFECTIVE DATE: *Objectives.* NRC is seeking to expand its knowledge of the medical specialty of radiation oncology. Specifically, the therapeutic uses of radioisotopes in brachytherapy patient procedures. Recently, significant misadministrations have occurred involving errors in the delivery of the prescribed radiation dose to the patient during either manual or remote afterloading brachytherapy procedures. As a result of evaluating the circumstances surrounding these events, NRC has identified the need to re-evaluate certain aspects of its regulatory program to determine whether modifications are indicated.

NRC intends to keep abreast of this technology and future developments in the therapeutic uses of radioisotopes and believes that such a Fellow, with expertise in these uses, can assist NRC staff in meeting this goal. The program is open to physicians interested in seeking an appointment for individual sabbatical pursuits. Other radiation specialists on sabbatical, or those who wish to engage in post-doctoral research, will also be considered. Individuals participating as Fellows would join NRC for approximately one year, to undertake activities consistent with the interests and needs of NRC and with the individual's training and experience; and that will result in a clearly defined assignment useful to NRC's regulatory program. Ideally, each Fellow would be available to NRC on a full-time basis; however, NRC will consider nominees who are available only on a part-time basis. Additionally, the number of appointments made will depend on the range of skills embodied in the nominations, individuals' interests and needs of NRC.

In addition to a specific assignment, or research project, it is anticipated that the Fellow would attend meetings of NRC's Advisory Committee on the Medical Uses of Isotopes (ACMUI); Federal, State, and local agencies; professional organizations; and groups, to participate in discussions on issues related to medical affairs and the use of radiation in medicine. The selectee may also participate in public meetings and seminars sponsored by NRC for exchanging information and discussing issues, of mutual interest, that will benefit the regulation of medical practice. A collateral goal is to create a cadre of individuals with experience in the regulation of medical use of isotopes; therefore, it is likely that former Fellows may be asked to participate, from time to time, in NRC-sponsored meetings and seminars after their appointment ends, to provide advice and consultation about the regulated program.

Therefore, NRC is primarily soliciting nominations of physicians involved with the medical use of radioisotopes, but will be pleased to receive nominations of other radiation health professionals and medical radiation specialists to serve as Fellows.

Appointment Method. Appointments will be made by means of Intergovernmental Personnel Act assignment, reimbursable detail, or professional term appointment, depending on the selectee's situation.

Term of Appointment. The term of appointment will be approximately one year. Appointments may be lengthened, depending on the depth and scope of the Fellow's project, availability and the needs of the NRC, to approximately two years.

Compensation. Fellows will receive compensation commensurate with their experience, salary history, and federal pay guidelines while serving their appointment. Fellows will be reimbursed for official travel and relocation expenses.

Duty Location. Fellows may be assigned to any Office in NRC, including the Office of the Commissioners, consistent with the interests and needs of NRC and the individual's training and experience. The duty location is at NRC Headquarters, Rockville, Maryland. It is anticipated that there will be some travel associated with this position.

Eligibility Requirements. NRC is an equal opportunity employer. Nominees must be U.S. citizens. Nominees must also satisfy applicable, NRC security, conflict of interest, and drug-free work place standards. Eligibility is open to physicians specializing in Radiation Oncology (Radiation Therapy), or medical physicists specializing in Therapeutic Radiological Physics. Other nominees will also be considered based on the needs of NRC and the individual's interest.

How to Nominate. Candidates may be nominated by professional groups, medical societies, government agencies, or may be self-nominated. Nominations must provide the nominee's current address and telephone number and include a resume describing the educational and professional qualifications of the nominee. A brief statement of the Individual's professional objectives should also be included.

Where to Submit Nominations. Submit nominations to: Secretary of the Commission. ATTN: Medical Visiting Fellows Program Manager, Office of Nuclear Material Safety and Safeguards, U.S., Nuclear Regulatory Commission, Washington, DC 20555.

Date Nominations Are Due. Nominations are due to the Secretary of the Commission by January 15, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Schlueter, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, Mail Stop: T8 F 5, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7894, facsimile (301) 415–5369.

Dated at Rockville, Maryland, this 1st day of November 1994.

For the Nuclear Regulatory Commission.

John E. Glenn,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–27481 Filed 11–4–94; 8:45 am]

BILLING CODE 7590–01–M

Availability of Branch Technical Position on When to Remediate Inadvertent Contamination of the Terrestrial Environment

The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of a Branch Technical Position on "When To Remediate Inadvertent Contamination of the Terrestrial Environment."

Copies of this document may be obtained free of charge upon written request to Janette Copeland, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, MS T–7F27, Washington, DC 20555. Further information can be obtained from Jack D. Parrott, Hydrogeologist, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, MS T–7F27, Washington, DC 20555. Telephone 301/415–6700. Internet JDP1@NRC.GOV.

The purposes of this Branch Technical Position (BTP) are: (a) to provide licensees with the NRC staff's expectations for operational good practices and remediation methods and procedures following inadvertent contamination of the terrestrial

environment by radioactive materials; (b) to inform licensees of the nature of an NRC response to an inadvertent contamination of the terrestrial environment; and, (c) to help insure consistency in NRC responses to instances of inadvertent contamination of the terrestrial environment. This guidance is also intended to address the timing of remediation (immediate or delayed) of inadvertent contamination of the terrestrial environment. This BTP does not supplant NRC's emergency (contingency) planning. The need for this BTP stems from the Division of Waste Management staff's concern with instances of inadvertent contamination of the terrestrial environment at NRC licensed facilities, and the delay that sometimes occurs in remediating this contamination.

Dated at Rockville, Maryland this 31st day of October 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–27484 Filed 11–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Oyster Creek Nuclear Generating Station; License No. DPR–16; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by a "PETITION FOR EMERGENCY ENFORCEMENT ACTION UNDER PROVISIONS OF 10 CFR 2.206 WITH REGARD TO OYSTER CREEK NUCLEAR POWER STATION", dated September 19, 1994, Oyster Creek Nuclear Watch and Nuclear Information and Resource Service, request that the Nuclear Regulatory Commission take action with regard to the Oyster Creek Nuclear Generating Station of the GPU Nuclear Corporation.

The Petition requests that the U.S. Nuclear Regulatory Commission: (1) immediately suspend the Oyster Creek operating license until the licensee inspects and repairs or replaces all safety-class reactor internal component parts subject to embrittlement and cracking; (2) immediately suspend the Oyster Creek operating license until the licensee provides an analysis regarding the synergistic effects of through wall cracking of multiple safety-class components; (3) immediately suspend the Oyster Creek operating license until the licensee has analyzed and mitigated any areas of noncompliance with regard to irradiated fuel pool cooling as a single unit Boiling Water Reactor (BWR); and (4) issue a Generic Letter requiring other licensees of single unit BWRs to provide information regarding fuel pool boiling in order to verify compliance with regulatory requirements, and to promptly take appropriate mitigative action if the units are not in compliance.

As the bases for their requests concerning safety-class reactor internal components, Petitioners state that: the core shroud in General Electric BWRs is vulnerable to age-related deterioration; 12 domestic and overseas, BWRs have found extensive cracking on welds of the core shroud; only 10 of 36 U.S. BWRs have inspected their core shrouds and 9 were found to have cracks; 19 of 25 selected BWR internal components are susceptible to stress corrosion cracking and 6 of 19 are susceptible to irradiation assisted stress corrosion cracking; Oyster Creek is the oldest operating General Electric Mark I BWR and the third oldest operating reactor in the United Stats, and has been subjected to the longest period of operational conditions that cause embrittlement and cracking; the BWR Owners Group stated that cracking of the core shroud is a warning signal that additional safety-class reactor internals are increasingly susceptible to age-related deterioration; cracking of any single part or multiple components jeopardizes safe operation of the nuclear station; Oyster Creek did not inspect for core shroud cracking prior to the current refueling outage and other safety-class reactor internals have not been adequately inspected for cracking; and a safety analysis has not been performed on the potential synergistic effects of multiple component cracking.

As the bases for their requests concerning fuel pool cooling design deficiencies, Petitioners state that: various design defects in BWR fuel pool cooling systems pose a significant increase in risk to the public safety and are violations or 10 CFR 50.49; 10 CFR Part 50, App. A, Criterion 63; 10 CFR Part 50, Appendix B, Criterion III; and Reg. Guides 1.13, 1.89 and 1.97; Oyster Creek is a single unit facility with no adjacent units to rely upon in the event that a design basis were to disable the fuel pool cooling system; and Oyster Creek has not docketed any material with regard to BWR design deficiencies identified in the 10 CFR Part 21 Report of Substantial Safety Hazard (November 27, 1992) of Messrs. Lochbaum and Prevatte, and thus Oyster Creek may be in violation of NRC regulatory requirements.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The Petition has been referred to the Director of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time. By letter dated October 27, 1994, the Director denied Petitioners' requests for an immediate suspension of the operating license.

A copy of the Petition and the Director's letter are available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Oyster Creek Nuclear Generating Station located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Dated at Rockville, Maryland this 27th day of October 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27483 Filed 11–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–277 and 50–278]

Philadelphia Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration, Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56, issued to Philadelphia Electric Company (the licensee), for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

The proposed amendment would clarify the minimum reactor steam pressure required for Surveillance Requirement 4.5C.1(e). The revised Surveillance Requirement will require the licensee to verify that the High Pressure Coolant Injection pump, with reactor pressure less than or equal to 175 psig. develop a flow rate of greater than or equal to 5000 gpm against a system head corresponding to reactor pressure. The current Surveillance Requirement specifies that the test be performed at 150 psig but does not provide a range of acceptable pressures.

This Technical Specifications (TS) change request (CR) is requested to be processed as an exigent TS change in accordance with 10 CFR 50.91(a)(6). Exigent processing is being requested

because the Peach Bottom Atomic Power Station (PBAPS) TS low pressure HPCI system testing requirements are ambiguous, and the licensee desires to accelerate the resolution of this ambiguity. The low pressure surveillance requirement (TS 4.5.C.1.e) requires that the test be performed at 150 psig. Prior to October 21, 1994, this 150 psig value was interpreted as a nominal value. During recent inspection activities surrounding the startup of PBAPS Unit 2 from refueling outage 2R010, the NRC revised a previous position and determined that this value could not be interpreted as a nominal value. The licensee could not have foreseen this event because they were conducting station activities in accordance with NRC guidance.

During the 1990 Safety System Functional Inspection (SSFI, Combined Inspection Report 90–200), the issue of the HPCI low pressure surveillance testing being performed at a nominal value was reviewed (Open item 90–200–12). In response to the SSFI open item, the licensee revised an existing Plant Operations Review Committee position, to document that the 150 psig was a nominal value, and committed to revising the TS to clarify the low pressure requirement. This commitment was incorporated into the licensee's September 29, 1994 improved Technical Specifications (ITS) submittal. The NRC accepted this position and closed the SSFI open item (Combined Inspection Report 50–277/90–80, 50–278/90–80, dated November 9, 1990). The anticipated effective date of the ITS is the fourth quarter of 1995. Because of the recently revised NRC position regarding TS 4.5.C.1(e), the licensee is pursuing the attached TSCR in advance of the overall conversion to the ITS, and requests that it be processed on an exigent basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

These changes increase the maximum pressure for performing the low pressure test on the HPCI pump from approximately 150 psig to [less than or equal to] 175 psig. For reason stated above, HPCI pump testing must be performed when the [electro-hydraulic control] EHC System for the main turbine is available and capable of regulating reactor pressure. Operating experience has demonstrated that reactor pressures as high as 175 psig may be required before the EHC system is capable of maintaining stable pressure during the performance of the HPCI test. The probability of an accident is not increased because the proposed changes will not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSC are operated, maintained, modified, or inspected. In addition, the pressure at which the HPCI System is tested is not assumed to be an initiator of any analyzed event. The role of the HPCI System is in the mitigation of accident consequences. The consequences of an accident are not increased because a small increase in the pressure at which the HPCI pump performance to design specifications is verified will not significantly delay or otherwise affect the validity of the test to determine that the pump and turbine are still operating at the design specifications. In addition, it is overly conservative to assume a component is inoperable when a surveillance has not been performed. In fact, in most cases, it is a matter of component operability not yet being demonstrated since the usual outcome of the performance of a surveillance is the validation of conformance with surveillance requirements. Therefore, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

These changes do not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSC are operated, maintained, modified, or inspected. These changes increase the pressure for performing the low pressure test on the HPCI pump from approximately 150 psig to [less than or equal to] 175 psig. Therefore, these changes will not create the possibility or a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The margin of safety is not reduced. These changes increase the pressure for performing the low pressure test on the HPCI pump from approximately 150 psig to [less than or equal to] 175 psig. For reasons stated above, the ability of the HPCI pump to perform at the lowest required pressure of 150 psig has already been demonstrated. A small increase in the pressure at which the performance to design specifications is verified will not significantly delay or affect the validity of the test to determine that the pump and turbine are still operating at the design specifications. These changes effectively extend[s] the initial entry into the applicable condition prior to performing the surveillance. However, this is considered acceptable since the most common outcome of the performance of a surveillance is the successful demonstration that the acceptance criteria are satisfied. In addition, the change provides the benefit of allowing the surveillance to be postponed until plant conditions exist where performance of the surveillance is unlikely to result in a pressure transient. These changes do not affect the current analysis assumptions. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the

amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 7, 1994, the license may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Government Publications Section, state Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(l) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 25, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room, located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 1st day of November, 1994.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-27485 Filed 11-4-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co., Centerior Service Company, and the Cleveland Electric Illuminating Co.; Exemption

I

The Toledo Edison Company, Centerior Service Company, and the Cleveland Electric Illuminating Company (the licensees) hold Facility Operating License No. NPF-3, which authorizes operation of the Davis-Besse Nuclear Power Station, Unit No. 1. The license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Ottawa County Ohio.

II

Section III.D.2(b)(ii) of 10 CFR Part 50, Appendix J requires that a full pressure air lock leakage test be performed whenever air locks are opened during periods when containment integrity is not required.

III

By letter dated October 21, 1994, the licensee requested an Exemption from the requirement of 10 CFR 50, Appendix J, Section III.D.2(b)(ii) identified in Section II above. If an air lock is opened during Modes 5 and 6, Section III.D.2(b)(ii) of Appendix J requires that an overall air lock leakage test at not-less-than the calculated peak containment pressure from a design-basis loss of coolant accident (Pa) be conducted before plant heatup and startup (i.e., before entering Mode 4). Instead, if no maintenance has been performed on the air locks that affects air lock sealing capabilities, the licensee would conduct an air lock seal leakage test (Section III.D.2(b)(iii) of 10 CFR 50, Appendix J), for the full pressure air lock test required by Section III.D.2(b)(ii).

If the periodic six-month test of Section III.D.2(b)(i) of Appendix J and the test required by Section III.D.2(b)(iii) of Appendix J are current, and no maintenance has been performed on the air lock that affects air lock sealing capabilities, there should be no reason to expect the air lock to leak excessively, just because it has been opened in Mode 5 or 6. If maintenance has been performed, which could affect air lock sealing capability, then a full-pressure air lock test will be performed following such maintenance.

The licensee's letter dated October 21, 1994, submitted information to identify the special circumstances for granting this exemption to Davis-Besse, pursuant to 10 CFR 50.12. The purpose of Appendix J to 10 CFR 50, is to assure that containment leak-tight integrity can be verified periodically, throughout service lifetime to maintain containment leakage, within the limits specified in the facility Technical Specifications. The purposed alternative test method, along with the six-month test requirement of Section III.D.2(b)(i) of Appendix J, and the testing requirements when maintenance is performed on the air lock that affects sealing capability, is sufficient to achieve this underlying purpose, in that it provides adequate assurance of continued leak-tight integrity of the air lock.

Based on the above discussion, the licensee's proposed substitution of an air lock seal leakage test described in III.D.2(b)(iii) for a full-pressure test, as discussed above, is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, and will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances described by 10 CFR 50.12(a)(2)(ii) exist, in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule, since the licensees have proposed an acceptable alternative method that accomplishes the intent of the regulation.

Accordingly, the Commission hereby grants the Exemption as described in Section III above from the requirements of 10 CFR 50, Appendix J, Section III.D.2(b)(ii).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (59 FR 54222).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 1st day of November, 1994.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94-27482 Filed 11-4-94; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Notification of Placement Program Study

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management is initiating a study on the feasibility of establishing a mandatory interagency placement program for Federal employees separated by reduction in force. This advance notice invites written comments from all interested parties.

DATES: Written comments will be considered if received no later than January 6, 1994.

ADDRESSES: Send written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20145-0001.

FOR FURTHER INFORMATION CONTACT: Diane Bohling, 202-606-0960, FAX 202-606-2329.

SUPPLEMENTARY INFORMATION: Public Law 103-337, the National Defense Authorization Act for Fiscal Year 1995, was signed into law by the President of the United States on October 5, 1994. Section 1066 of this law requires the Director of the Office of Personnel Management (OPM) to conduct a study on the feasibility of establishing a mandatory interagency placement program for Federal employees affected by a reduction in force and report the findings to Congress no later than April 5, 1995. This program would supplement the existing Interagency Placement Program and internal placement efforts conducted by

individual agencies. For purposes of this study, the law defines an interagency placement program as one that requires an agency to offer a position to an employee of another agency affected by reduction in force if the position cannot be filled through a placement program of the agency in which the position is located, the employee to whom the offer is made is qualified for the offered position, and the geographic location of the offered position is within the commuting area of the residence of the employee or the employee's present or last-held position. Such a program would not affect internal agency placement programs including, but not limited to, merit promotion, upward mobility, and reassignments.

Under the law, the term "agency" means an Executive agency as defined in section 105 of title 5, United States Code, except that such term does not include the General Accounting Office. The term "Federal employees affected by reductions in force" means Federal employees who are separated, or are scheduled to be separated, from service under reduction in force pursuant to regulations prescribed under section 3502 of title 5, United States Code, or procedures established under section 3595 of such title. The law provides that OPM conduct this study in consultation with the Secretary of Defense and seek comments from the heads of all appropriate Federal agencies.

This notice is to request input from all interested parties on this issue and any other options to assist Federal employees affected by downsizing. Information gained during this study will be used to submit a report of findings to Congress and may result in proposals for regulatory or statutory changes.

James B. King,

Director.

[FR Doc. 94-27438 Filed 11-4-94; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34917; File No. SR-Amex-94-43]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc., Relating to New Organizational Structures for Member Organizations.

October 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 14, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On October 31, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to narrow the scope of the original filing.[3] The Amex has requested accelerated approval of the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to expand the categories of organizations which are eligible to become member organizations to include entities with new organizational structures. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Rules relating to the admission of entities with new organizational structures as member organizations. Specifically, the proposed amendment would permit the Exchange, in its discretion, and on such terms and conditions as the Exchange may prescribe, to approve limited liability companies ("LLCs"), business trusts or other organizational structures as member organizations so long as the characteristics of the entity in question are essentially similar to those of corporations or partnerships.

An LLC is a hybrid business entity, combining the limited liability characteristics of a corporation with the pass-through taxation attributes of a partnership. Currently, approximately 45 States and the District of Columbia have adopted LLC statutes. New York State recently adopted legislation, effective October 24, 1994, authorizing LLCs. The Exchange has been advised that a number of existing member organizations are considering altering their business structure to that of an LLC. Both the Chicago Board Options Exchange ("CBOE") and the Chicago Stock Exchange ("CHX") already permit membership by an LLC, and the New York Stock Exchange ("NYSE") recently received SEC approval to amend its rules to do so.[4]

The term "business trust" is generally used to describe a trust in which the managers are principals, and the shareholders are cestuis que trust. As stated in *Black's Law Dictionary*, "[t]he essential attribute [of a business trust] is that property is placed in the hands of trustees who manage and deal with it for use and benefit of beneficiaries."[5]

Accordingly, the Exchange proposes to adopt new Commentary .01 to Definition 2 of the Exchange Rules to provide that entities may be accepted as member organizations by the Exchange

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] *See* letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated October 31, 1994 ("Amendment No. 1"). The portions of this filing that were withdrawn in Amendment No. 1 have been submitted to the Commission as part of File No. SR-Amex-94-23.

[4] *See* Securities Exchange Act Release Nos. 33124 (November 1, 1993), 58 FR 59282 (November 8, 1993) (File No. SR-CBOE-93-40); 34604 (August 26, 1994), 59 FR 45316 (September 1, 1994) (File No. SR-CHX-94-17) ("CHX Approval Order"); and 34664 (September 13, 1994), 59 FR 48346 (September 20, 1994) (File No. SR-NYSE-94-01) ("NYSE Approval Order").

[5] *Black's Law Dictionary* 180 (5th ed. 1979).

if they have characteristics essentially similar to partnerships, corporations or both. At the present time, the Exchange intends to consider both LLCs and business trusts as eligible to become member organizations. These entities would be subject to all rules applicable to member organizations, and existing references to member firm or member corporation, as appropriate, and member organization would be deemed to include any such entity which is approved as a member organization. Of course, in order to be a member organization, an entity must be able to qualify as a broker or dealer registered with the SEC pursuant to the Act. In addition, the Exchange staff would review applications on a case-by-case basis as it does with all member organization applicants. Prior to approving any such organization for membership, the staff would have to be satisfied that: (1) the Exchange would legally have appropriate jurisdiction over such an entity; and (2) the permanency of the entity's capital is consistent with that required of other member organizations.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(2) in particular in that it is designed to ensure that the rules of the Exchange provide that any broker or dealer or natural person associated with a registered broker or dealer may become a member of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–43 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] Specifically, the Commission believes the Amex proposal is consistent with Section 6(b)(2) of the Act,[7] which requires that the rules of an exchange, subject to the provisions of Section 6(c) of the Act,[8] ensure that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of the exchange and any person may become associated with a member thereof.

The Amex currently allows individuals, partnerships, and corporations to become members of the Exchange.[9] The proposed rule change will enable entities with new organizational structures similar to corporations and partnerships to become Exchange members and be included in the Exchange's definition of a member organization. As in the case of a partnership or corporation applying for membership, the new entity will be subject to all other requirements for membership approval.

The Commission believes that the amendment to the Amex Rules reasonably balances the Exchange's interest in having the flexibility to approve entities with new organizational structures for Exchange membership, with the regulatory interests in protecting the financial and structural integrity of a member organization. For example, although the proposal will permit the Exchange to approve business trusts, LLCs, or other organizational structures with characteristics of corporations or partnerships as member organizations, the Amex staff will review each Exchange member organization application on a case-by-case basis, and, prior to approving any such organization for membership, the Exchange must be satisfied that: (1) the Exchange legally would have appropriate jurisdiction over such an entity; and (2) the permanency of the entity's capital is consistent with that required of other member organizations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the benefits of the proposed rule change to be realized as soon as possible. In addition, the Exchange's proposal is substantially identical to CHX and NYSE proposals that were published in the **Federal Register** for the full comment period and were approved by the Commission.[10]

It is therefore ordered, pursuant to Section 19(b)(2)[11] that the proposed rule change (SR–Amex–94–43) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27440 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. § 78f (1988).

[7] 15 U.S.C. § 78f(b)(2) (1988).

[8] 15 U.S.C. § 78f(c) (1988).

[9] Article I, Section 3(f) of the Amex Constitution currently states that the term "member organization" includes "member firms" and "member corporations." The term "member firm" typically is used to refer to a partnership. *See, e.g.*, Article IV, Section 2 of the Amex Constitution. In File No. SR–Amex–94–23, the Amex has proposed to amend Article I, Section 3(f) to specify that the term "member organization" means a partnership, corporation, trust or such other entity as the Exchange may, by Rule, permit to become a member organization and which meets certain qualifications. The Amex also has proposed to delete all references in its Constitution and Rules to the terms "member firm" and "member corporation" and to make revisions thereto that reflect more comprehensively the admission of these new entities. If File No. SR–Amex–94–23 is not approved, the Commission would expect the Amex to submit a proposed rule change specifically addressing the definition of the term "member organization" and other issues related to the admission of new entities.

[10] No comments were received in connection with the proposed rule changes that amended the comparable CHX and NYSE rules. *See* CHX and NYSE Approval Orders, *supra*, note 4.

[11] 15 U.S.C. § 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–34919; File No. SR–BSE–94–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to Its Fee Schedule

October 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On October 31, 1994, the BSE filed Amendment No. 1 with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks to rebate certain fees to its member firms for the month of September 1994.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* letter from Karen Aluise, BSE, to Glen Barrentine, Division of Market Regulation, Commission, dated October 27, 1994. In Amendment No. 1 the BSE requested that the proposed rule change, which originally requested summary effectiveness pursuant to Section 19(b)(3) of the Act, be changed such that the request is one for accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to rebate to BSE member firms $.25 per trade on all non-self-directed, electronically routed, BSE executed, trades of any size for trades executed in the month of September 1994. For purposes of the per trade credit, "non-self-directed" shall mean entered by a BEACON subscriber in stocks in which the routing firm has no affiliation with or financial interest in the specialist operation registered in those stocks. The aggregate rebate per firm shall be limited to the total monthly layoff transaction fees charged to that firm in the month of September.

2. Statutory Basis

The statutory basis for this proposal is Section 6(b)(4) of the Securities Exchange Act of 1934.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–14 and should be submitted by November 28, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposal to rebate BSE member firms, as described above, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act[4] in that it establishes or changes a due, fee, or other charge imposed by the Exchange.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the BSE to continue its billing cycle uninterrupted.

It is therefore ordered, Pursuant to Section 19(b)(2)[5] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27444 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34918; File No. SR–BSE–94–13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to Procedures for the Handling of Market-on-Close Orders on Expiration Fridays and Quarterly Index Expiration Days

October 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 12, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On October 14, 1994, the Exchange submitted to the Commission

[4] 15 U.S.C. § 78f(b)(4) (1988).

[5] 15 U.S.C. § 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1991).

Amendment No. 1 to the proposed rule change in order to correct certain typographical errors and to specify the duration of the pilot extension.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend the pilot program which provides a set of procedures for the handling of Market-on-Close ("MOC") orders[2] on Expiration Fridays[3] and Quarterly Index Expiration Days.[4] These procedures mirror the procedures in place on the New York Stock Exchange ("NYSE")[5] in order to ensure equal treatment of orders in both markets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot program under which the BSE has adopted certain procedures to mirror those of the primary market for the handling of MOC orders on Expiration Fridays and Quarterly Index Expiration Days so that the BSE does not become a haven for MOC orders that are prohibited on the NYSE.[6] In this way, all orders sent to the Exchange will receive equal treatment with orders sent to the NYSE. The proposed procedures include (a) prohibiting the cancellation or reduction of any MOC order in any NYSE stock after 3:40 p.m. on Expiration Fridays and Quarterly Index Expiration Days, (b) providing a 3:40 p.m. deadline for the entry of MOC orders, in all NYSE stocks, related to a strategy involving any stock index future, stock index option or option on stock index futures in expiring contracts, (c) publication of MOC order imbalances of 50,000 shares or more in the pilot stocks as soon as practicable after 3:40 p.m. and (d) providing for the entry of MOC orders after 3:40 p.m. in the pilot stocks only to offset published imbalances. With respect to item (a) above, the Exchange will permit cancellations of MOC orders after 3:40 p.m. in those instances where a legitimate error has been made. The term "pilot stocks" refers to the list of stocks designated by the NYSE as pilot stocks for purposes of its auxiliary closing procedures.[7] The Exchange is seeking a one-year extension of the current pilot program to expire on October 31, 1995.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The BSE believes that, if investors, whose orders are banned on the NYSE because of current market conditions, are able to reroute those orders to the Exchange for execution on the BSE without regard to current market conditions, there could be a negative impact on the overall market as a result of the execution of those orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–13

[1] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Beth A. Stekler, Attorney, Division of Market Regulation, SEC, dated October 12, 1994 ("Amendment No. 1").

[2] The BSE defines an "at the close order" as a market order which is to be executed at or as near to the close as practicable. See Ch. I, Sec. 3 of the BSE Rules.

[3] The term "Expiration Friday" refers to the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently.

[4] The term "Quarterly Index Expiration Day" refers to the trading day, currently the last trading day of each calendar quarter, on which Quarterly Index Expiration ("QIX") options expire.

[5] The Commission approved the NYSE's current auxiliary closing procedures for Expiration Fridays and Quarterly Index Expiration Days (collectively, "expiration days") on a pilot basis in Securities Exchange Act Release No. 32668 (September 10, 1993), 58 FR 48687 (September 17, 1993) (File No. SR–NYSE–93–33) ("1993 Auxiliary Closing Procedures Approval Order"). The NYSE procedures establish, for all stocks, a 3:40 p.m. deadline for (1) the entry of MOC orders related to a strategy including any expiring stock index options, stock index futures or options on stock index futures and (2) the cancellation or reduction of any MOC order. In addition, for the pilot stocks (as defined below, see infra note 7), the NYSE specialist must, as soon as practicable after 3:40 p.m., disseminate any MOC order imbalance of 50,000 shares or more; thereafter, MOC orders in the pilot stocks may be entered only to offset a published imbalance.

[6] Commission approval of the BSE's MOC order procedures expires on October 31, 1994. See Securities Exchange Act Release No. 33639 (February 17, 1994), 59 FR 9295 (February 25, 1994) (File No. SR–BSE–93–04) ("BSE Pilot Approval Order"). The Exchange has requested a one-year extension of the pilot program to expire on October 31, 1995. See Amendment No. 1, *supra*, note 1. The Exchange also has requested accelerated approval of the proposed rule change in order to allow the pilot program to continue without interruption.

[7] As designated by the NYSE, the Expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poors ("S&P") 500 stocks and any component stocks of the Major Market Index ("MMI") not included therein. See 1993 Auxiliary Closing Procedures Approval Order, *supra*, note 5. The Quarterly Index Expiration Day pilot stocks consist of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks. *Id.*

and should be submitted by November 28, 1994.

IV. Commission's Findings and Order Granting Temporary Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b). In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

In recent years, the self-regulatory organizations, with the support of the Commission, have instituted certain safeguards to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving expiring index derivative products. For instance, on expiration days, the NYSE utilizes auxiliary closing procedures [8] designed to help the specialist attract any contraside interest necessary to alleviate MOC order imbalances and dampen their effect on the closing price. Based on the NYSE's experience,[9] the Commission believes that these procedures work relatively well and may result in more orderly markets at the close on expiration days.

In today's highly competitive market environment, however, it is possible that a regional exchange, which trades NYSE-listed stocks but does not have comparable closing procedures, could be utilized by market participants to enter MOC orders prohibited on the NYSE. Although the Commission has no reason to believe that the BSE market has become a significant alternative market to enter otherwise prohibited MOC orders, the Commission agrees with the BSE that, if this possibility were realized, it could have a negative impact on the fairness and orderliness of the national market system.[10] Accordingly, in its order initially approving the Exchange's pilot program,[11] the Commission concluded that it is reasonable for the BSE to adopt procedures for the handling of MOC orders that mirror the NYSE's, thereby ensuring the equal treatment of orders in both markets and, in the event of unusual market conditions, offering the BSE the same benefits in terms of potentially reducing volatility.

In its approval order, the Commission asked the BSE to study the effectiveness of its MOC order procedures. Specifically, the Commission requested the following information: (1) For all pilot stocks, the size of the MOC order imbalance on the BSE at 3:40 p.m. and at 4:00 p.m.; (2) for all pilot stocks, the price and time of the last regular-way trade on the BSE and the closing price; and (3) for each pilot stock with a MOC order imbalance of 50,000 shares or more at 3:40 p.m., an appropriate measure of volatility at the close on the BSE.

On October 5, 1994, the Exchange submitted to the Commission its first monitoring report on its MOC order pilot program. The Commission finds that, although this monitoring report provides certain useful information concerning the operation of the pilot program, the BSE must provide further data before the Commission can fairly and comprehensively evaluate the BSE's use of its auxiliary closing procedures. To allow such additional information to be gathered and reviewed, without compromising the benefits that market participants might receive, the Commission finds that it is reasonable to extend the pilot program until October 31, 1995.

In this regard, the Commission continues to believe that the pilot procedures should allow the BSE to obtain an accurate view of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof. The BSE pilot program establishes a simultaneous 3:40 p.m. deadline for the entry of expiration-related MOC orders and for the cancellation or reduction of any MOC order. Substantial MOC order imbalances in the pilot stocks are required to be disseminated promptly thereafter.[12] Based on the Exchange's monitoring report, the pilot procedures, specifically the requirement that MOC orders included in imbalances be irrevocable and the restrictions on further MOC order entry, appear to have operated effectively on all expiration days covered by the report. Accordingly, the Commission is satisfied that any BSE imbalance publications should reflect actual investor interest.

In addition, although the BSE's monitoring report does not reveal any unusual market conditions, the Commission continues to believe that, in the event of such conditions, the BSE should have sufficient time to attract contra-side interest to help alleviate imbalances created by the unwinding of index derivative related positions. As noted above, the pilot procedures require both the early submission of expiration-related MOC orders and, for the pilot stocks, prompt dissemination of substantial MOC order imbalances. While the Commission recognizes that 3:40 p.m. is relatively near the close, the Commission believes that deadline strikes a reasonable balance between the need to provide the investing public with timely and reliable notice of expiration-related order flow and the need to avoid unduly infringing upon legitimate trading strategies.

The Commission is approving the proposed rule change on a pilot basis until October 31, 1995. As long as some index derivative products continue to expire based on the closing stock prices on expiration days, the Commission agrees with those self-regulatory organizations that argue that such procedures are necessary to provide a mechanism to handle the potentially large stock imbalances engendered by the unwinding of index derivative related positions. During this pilot program, the Commission expects the BSE to monitor the effectiveness of its MOC order procedures.

The Commission therefore requests that the BSE submit a report to the Commission, by August 31, 1995, describing its experience with the pilot program. At a minimum, this report should contain, for each Expiration Friday and Quarterly Index Expiration Day, the following data: (1) for each pilot stock that had a MOC order imbalance on the BSE, the size of that imbalance at 3:40 p.m. and at 4:00 p.m.; (2) for each pilot stock listed in (1) above, the consolidated closing price and the number of shares of MOC orders printed on the BSE; and (3) for each pilot stock that had a MOC order imbalance of 50,000 shares or more at 3:40 p.m., an appropriate measure of volatility at the close for the BSE (for example, the change in price of the closing transaction, measured as a

[8] See *supra*, note 5.

[9] The NYSE has submitted to the Commission several monitoring reports describing its experience with the auxiliary closing procedures. For further discussion of the NYSE's results, see 1993 Auxiliary Closing Procedures Approval Order, *supra*, note 5.

[10] For example, if MOC orders prohibited on the NYSE were entered instead on the BSE, unusually large MOC order imbalances on the regional exchange could contribute to overall market volatility.

[11] See BSE Pilot Approval Order, *supra*, note 6.

[12] The BSE has indicated that it would disseminate imbalances to its floor, its member firms and the investing public in a manner which is substantially similar to that utilized by the NYSE. Telephone conversation between Karen A. Aluise, Assistant Vice President, BSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on February 10, 1994.

percentage, from the last trade and/or the change in the specialist's position) and a description of how the pilot procedures influenced market conditions. Any request to modify this pilot program, to extend its effectiveness or to seek permanent approval of the pilot procedures also should be submitted to the Commission, by August 31, 1995, as a proposed rule change pursuant to Section 19(b) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue without interruption. In addition, the procedures the Exchange proposes to continue using are identical to the procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[13]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[14] that the proposed rule change (SR–BSE–94–13) is hereby approved on a pilot basis until October 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27442 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34921; File No. SR–MCC–94–12]

Self-Regulatory Organization; the Midwest Clearing Corporation; Order Granting Accelerated Approval of Proposed Rule Change Enabling Midwest Clearing Corporation To Enter Into Contracts With Participants To Provide Custodial, Transactional, and Related Services on Behalf of Participants

October 31, 1994.

On October 11, 1994, The Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MCC–94–12) pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal appeared in the **Federal Register** on October 19, 1994.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description of the Proposal

The purpose of the proposed rule change is to permit MCC to enter into contracts with any of its participants whereby MCC will provide transactional processing and data-entry services for a participant with respect to the participant's certificated securities which are not depository eligible. MCC will not be obligated to enter into such contracts with any participant, and if it chooses to enter into such a contract, it will not be obligated to do so on similar terms available to any other participant.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Sections 17A(b)(3) (A) and (F).[3] Sections 17A(b)(3) (A) and (F) require that the rules of a clearing agency be designed to assure the safeguarding of funds and securities in the custody and control of the clearing agency or for which it is responsible. The Commission believes that MCC's service is consistent with this obligation.

The service provides custodian, transaction processing, and related data-entry services with respect to certificated securities not eligible for book-entry processing. Participants have been experiencing a continual decline in their activity associated with the processing of physical securities primarily due to the increase in book-entry eligibility of securities at the clearing agency level. These participants no longer find it desirable to maintain their own custodial operations and have requested MCC provide such custodial and processing services as part of MCC's operations.

The Commission believes that MCC's proposed rule change should help to minimize inefficient procedures employed by individual participants by concentrating these operations in one centralized facility. As a result, the individual participants will be able to eliminate their own operations and the high fixed costs associated with them while maintaining the required safeguarding of these securities.

MCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will allow MCC to implement the service more expediently and thereby should provide saving and efficiency to those participants that enter into such service contracts with MCC.

III. Conclusion

For the reasons stated above, the Commission finds that MCC's proposal is consistent with the Act,[4] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–MCC–94–12) be, and hereby is, approved on an accelerated basis.

For the Commission of the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27441 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34916; File No. SR–NYSE–94–32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to a One-Year Extension of the Pilot for Auxiliary Closing Procedures for Expiration Days

October 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the purposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. While the NYSE has not requested accelerated approval of the proposal, the auxiliary closing procedures are scheduled to expire on October 31, 1994. The Commission is publishing this notice to solicit

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[13] No comments were received in connection with the proposed rule change which initiated the BSE's MOC order pilot program. See BSE Pilot Approval Order, *supra*, note 6.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 34834 (October 13, 1994), 59 FR 52851 [File No. SR–MCC–94–12] (notice of proposed rule change).

[3] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[4] 15 U.S.C. 78q–1 (1988).

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot for auxiliary closing procedures for market-at-the-close ("MOC") orders utilized on expiration Fridays and quarterly expiration days until October 31, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Special procedures regarding the entry of market-at-the-close ("MOC") orders on expiration Fridays were originally adopted in 1986 for quarterly triple expiration of derivative instrument products.[3] Since November 1988, these procedures have been used for each monthly expiration and apply to the so-called "pilot stocks" (the 50 most highly capitalized S&P 500 stocks and any component stocks of the Major Market Index that are not included in this group of 50).[4] In April 1992, the Exchange modified the pilot procedures and included additional special procedures for handling MOC orders in all stocks on expiration Fridays. In March 1993, the Exchange extended the expiration Friday auxiliary closing procedures to days on which quarterly index expiration ("QIX") options expire.[5] In September 1993, the Exchange again modified the pilot procedures to change the cut-off time for entry, cancellation or reduction of MOC orders to 3:40 p.m.

The current procedures require that MOC orders in any stock related to a strategy involving derivative index products be entered for execution by 3:40 p.m. and that no cancellation or reduction of any MOC order in any stock take place after 3:40 p.m. In addition, Floor brokers representing orders related to a strategy involving derivative index products must indicate their MOC interest to the specialist by 3:40 p.m. However, a Floor broker who is handling a working order that is not derivative-related, may continue to work that order until just before the close, and if so instructed by his or her customer, may turn the unfilled balance over to the specialist for execution at the market at the close.

For the pilot stocks, a single publication of imbalances of 50,000 shares or more is made as soon as practicable after 3:40 p.m. After the imbalance publication, MOC orders in the pilot stocks may be entered only to offset a published imbalance. The entry of MOC orders after 3:40 p.m. to establish or liquidate positions related to a strategy involving derivative instruments is not permitted even if such orders might offset published imbalances.

The auxiliary procedures utilized for expiration days have been approved as a pilot on a yearly basis and are due to expire on October 31, 1994. These procedures have been effective in minimizing excess volatility on the close on expiration days. The Exchange recommends that the procedures described above be extended to October 31, 1995.

The Exchange continues to believe, however, that concerns about excess market volatility that may be associated with the expiration or settlement of derivative index products would be most appropriately addressed if the expiration or settlement value of all such products were based on the NYSE opening rather than the closing price on the last business day prior to the expiration or settlement of the product.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for the proposed rule change is the requirement under section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–32 and should be submitted by November 28, 1994.

[3] Expiration Friday is the trading day, usually the third Friday of the month, when some stock index futures, stock index options and options on stock index futures expire or settle concurrently. Triple expirations are the four times a year during the months of March, June, September, and December when all stock index futures, stock index options, options on stock index futures and individual equity options expire.

[4] The NYSE auxiliary closing procedures for expiration Fridays were initially approved by the Commission on a pilot basis for a one-year period beginning in November, 1988 and extending through October, 1989. The pilot has since been extended each year between October 1989 through October 1994 on a one-year pilot basis. See Securities Exchange Act Release Nos. 26293 (November 17, 1988), 53 FR 47599; 26408 (December 29, 1988), 54 FR 343 (approving File No. SR–NYSE–88–37); 27448 (November 16, 1989), 54 FR 48343 (approving File No. SR–NYSE–89–38); 28564 (October 22, 1990), 55 FR 43427 (approving File No. SR–NYSE–90–49); 29871 (October 28, 1991), 56 FR 30004 (approving File No. SR–NYSE–91–31); 31386 (October 30, 1992), 57 FR 52814 (approving File No. SR–NYSE–92–30); and 32868 (September 10, 1993), 58 FR 48687 (approving File No. SR–NYSE–93–33) ("1993 Approval Order").

[5] On QIX expiration days, the "pilot stocks" include the ten highest weighted stocks of the S&P MidCap 400 Index (in addition to the fifty highest weighted stocks underlying the S&P 500 Index, any component stocks of the Major Market Index not included in that group).

IV. Commission's Findings and Order Granting Temporary Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to extend the pilot for auxiliary closing procedures on expiration days through October 1995, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that an extension of the pilot for auxiliary closing procedures on expiration days is consistent with section 6(b)(5) of the Act.[6] Section 6(b)(5) requires, among the other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market, and to protect investors and the public interest. For the reasons set forth below, the Commission believes that the NYSE proposal furthers the objectives of section 6(b)(5) of the Act.

The NYSE's auxiliary closing procedures were initially adopted in September 1986 to apply to triple expirations.[7] The Commission has extended these procedures to all monthly expiration Fridays on a yearly pilot basis since 1988.[8] These procedures resulted from efforts by the Commission and the self-regulatory organizations to address stock market volatility associated with the expiration of index derivative products traded in conjunction with the underlying component stocks as part of index derivative related trading strategies.

In our 1993 Approval Order, the Commission extended the NYSE's MOC pilot program procedures through October 31, 1994, and requested that the NYSE provide the Commission with specific data by July 31, 1994, detailing the NYSE's experience with the pilot program and containing an analysis of the effectiveness of the expiration Friday procedures in reducing volatility. Specifically, the Commission requested data covering expiration Fridays from October 1993 through June 1994. The Commission requested that the report include: (1) The names of the pilot stocks and the imbalance (if any) at 3:40 and at the close for those stocks that had an imbalance of MOC orders of 50,000 shares or more at 3:40; (2) for those stocks with an imbalance of 50,000 shares or more at 3:40, the names of the stocks where the imbalance changed from one side of the market (sell or buy) to the other side (buy or sell) due to cancellations of MOC orders; (3) for all pilot stocks, all MOC order imbalances (of any size) as of 4:00 p.m.; (4) the change in price of the closing transactions from the previous trade for all pilot stocks; (5) the change in price of the closing transactions from the price of transactions at 4:00 p.m. (if there were no transactions precisely at 4:00 p.m., the NYSE was to use the price from the transaction effected closet in time to 4:00 p.m.) for all pilot stocks; and (6) for each pilot stock, the number of shares in MOC orders submitted by 3:40 p.m. that were canceled for any reason prior to the close. The Commission also stated that the report should include: (1) The change in the Dow Jones Industrial Average ("DJIA") at the close on each expiration Friday; (2) opening prices and daily trading ranges of the pilot stocks on expiration Fridays, as well as the following Mondays; and (3) price volatility as measured by the change in price from the last regular way trade to the closing price, including historical data analyzing price volatility at the close prior to the implementation of the prohibition on canceling MOC orders after 3:45 p.m. and the other MOC procedures. Finally, in our approval order regarding QIX auxiliary closing procedures, the Commission requested that the Exchange also include in its report all of the above requested data for QIX expiration days which expire at the en of the calendar quarter. The Commission requested that the NYSE provide the Commission with a report by July 31, 1994 covering expirations through June 1994.

The NYSE submitted a report to the Commission on July 26, 1994. The report covers expiration Fridays for the period November 1993 through June 1994 and the December 31, 1993 and March 31, 1994 quarterly expirations. For that period, the NYSE reports that there were 117 (out of 413 total) stocks with buy imbalances greater than 50,000 shares at 3:40 p.m. Of these, 84 still had MOC buy imbalances greater than 50,000 at the close and three had reversed to sell imbalances under 50,000. In contrast, there were only 10 stocks with sell imbalances over 50,000 at 3:40 p.m., of which five still had sell balances over 50,000 shares at the close. In general, both the number of stocks with imbalances over 50,000 shares and the average number of shares in the imbalance declined between 3:40 p.m. and the close.

The report also discusses MOC prices and price changes at 4:00 p.m. and at the close. The data show very little volatility at the close. Over half the stocks had no change at the close, 89.3% changed one-eighth point or less, and j96.1% changed one-quarter point or less. The stocks with large imbalances also did not exhibit much volatility at the close. The stocks with buy imbalances over 50,000 shares at the close averaged an increase of slightly more than one-eighth; the stocks with sell imbalances over 50,000 shares at the close averaged less than one-eighth point decline.

With respect to QIX expiration procedures, the Exchange states that there were only 4 stocks with buy imbalances greater than 50,000 shares at 3:40 p.m., only one of which still had an MOC buy imbalance greater than 50,000 shares at the close. In contrast, there were 26 stocks with sell imbalances over 50,000 at 3:40 p.m., 17 of which still had sell balances over 50,000 shares at the close.

The report also discusses quarterly expiration prices and price changes at 4:00 p.m. and the close. The data show very little volatility at the close. Nearly half the stocks had no change at the close, 79% changed one-eighth point or less, and 92% changed one-quarter point or less. The stocks with sell imbalances over 50,000 shares at the close on average declined more than one-eighth; the stocks with buy imbalances over 50,000 shares at the close increased 0.3125 points on average.

As noted above, pursuant to the NYSE pilot program, the auxiliary closing procedures for expiration Fridays and QIX expiration days (cumulatively, "expiration days") place limitations on MOC order-entry with regard to orders related to any strategy involving an expiring derivative index product. The auxiliary closing procedures also restrict the cancellation of MOC orders and provide for the dissemination of MOC order imbalances of 50,000 shares or more in certain pilot securities. The present proposal would extend the existing pilot procedures for a one year pilot period through October 1995. MOC order cancellations for bona fide errors would continue to be accepted. Once a publication of an imbalance in a pilot stock has been made, any MOC orders subsequently entered in such pilot stock will be accepted only to trade on the opposite side of the market in relation to such published imbalance. The entry of a MOC order to establish or liquidate positions related to a strategy involving derivative instruments, however, would not be permitted even if such orders might offset published imbalances.

The Commission believes that the auxiliary closing procedures should enable market participants to gain a more accurate picture of the buying and

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] *See supra* note 3.

[8] *See supra* notes 3–4.

selling interest in MOC orders at expiration. The Commission continues to believe that, by requiring early submission of MOC orders and disseminating significant imbalances (50,000 shares or more) in certain specified stocks, the NYSE should be able to attract contra-side interest to help alleviate imbalances caused by the liquidation of stock positions related to index derivative product trading strategies. In this regard, the NYSE's most recent report concerning expiration Friday volatility and the expiration Friday closing procedures indicates that the procedures have worked relatively well and may have resulted in more orderly markets at the close on expiration Fridays.

The Commission is approving an extension of the pilot program through October 1995. As long as some index derivative products continue to expire based on closing stock prices on expiration Fridays, the Commission agrees with the NYSE that such procedures are necessary to provide a mechanism to handle the potential large imbalances that can be engendered by firms unwinding index derivative related positions. During the pilot extension, the Commission expects the NYSE to continue to monitor closely the effectiveness of the procedures, and to submit a report with all of the same data previously requested for prior periods. The report should cover all expirations through June 1995, and must be submitted to the Commission no later than July 31, 1995[9] along with a proposed rule change which should either request an additional extension of the pilot program or permanent approval of the pilot procedures.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This will permit the procedures to continue on an uninterrupted basis. Further, on September 9, 1994, the NYSE issued an Information Memo to its members notifying them of the auxiliary closing procedures. Finally, special auxiliary closing procedures have been utilized by the NYSE since 1986, and the procedures are intended to reduce excessive market volatility at the close.

It is therefore ordered, pursuant to Section 19(b)(2)[10] that the proposed rule change is hereby approved on a pilot basis through October 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-27443 Filed 11-4-94; 8:45 am]

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[9] The Commission notes that this request for information is not exclusive and that the NYSE should add any additional data and analysis to the report in order to assess the effectiveness of the procedures in reducing excess market volatility on expiration Fridays.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-34920; File No. SR-Phlx-94-40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Automatic Execution of Index Option Orders

October 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 3, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to codify the eligibility of index options for its Automated Options Market ("AUTOM") System and its automatic execution feature ("Auto-X").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Autom is the Exchange's electronic order routing, delivery, execution, and reporting system for options. Orders are routed from member firms directly to the appropriate specialist post on the Exchange's trading floor. Certain market and marketable limit orders are eligible for AUTOM's automatic execution feature, AUTO-X. These AUTO-X designated orders are automatically executed at the disseminated quotation price on the Exchange and reported to the originating firm. Those orders not eligible for AUTO-X are manually handled by the specialist.

The AUTOM system has operated on a pilot basis since 1988, when it first was approved by the Commission for market orders of up to five contracts for twelve Phlx near-month equity options.[2] AUTOM has been extended and amended several times since.[3] Most recently, the pilot program was approved to operate until December 31, 1994.[4] In 1991, the Commission approved the use of AUTO-X as part of the AUTOM pilot program.[5] Orders for up to 100 contracts are eligible for AUTOM and orders for up to 25 contracts are eligible for AUTOM-X.[6]

At this time, the Phlx proposes to codify its existing practice of accepting index option orders for execution through AUTOM and AUTO-X. Currently, AUTOM and AUTO-X are available for all Phlx options, including both equity options and index options. Although the term "index options" was not specifically employed by the Phlx throughout the AUTOM pilot program, Exchange research indicates that index options became AUTOM-eligible in June 1990, and AUTO-X-eligible in March 1991. Since then, the Exchange has

[2] *See* Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390.

[3] *See* Securities Exchange Act Release Nos. 25868 (June 30, 1988), 53 FR 25563; 26354 (December 13, 1988), 53 FR 51185; 26522 (February 3, 1989), 54 FR 6465; 27599 (January 9, 1990), 55 FR 1751; 28265 (July 26, 1990), 55 FR 31274; 28978 (March 15, 1991), 56 FR 12050; 29662 (September 9, 1991), 56 FR 45816 (permitting AUTO-X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 51247 (permitting AUTO-X for all strike prices and expiration months); 29837 (October 16, 1991), 56 FR 55146 (permitting AUTO-X orders up to 20 contracts in all options); 32559 (June 30, 1993), 58 FR 36496; 32906 (September 15, 1993), 58 FR 15168 (permitting AUTO-X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790.

[4] *See* Securities Exchange Act Release No. 33405, *supra* note 3.

[5] *See* Securities Exchange Act Release No. 28978, *supra* note 3.

[6] *See* Securities Exchange Act Release No. 32000 (March 15, 1993), 58 FR 15168.

included index options trading when it reports volume information and makes capacity representations to the Commission as part of the AUTOM pilot. Accordingly, codifying index options into the AUTOM pilot does not raise new systems capacity concerns, as AUTOM has operated without problems since index options have been included in AUTOM; specifically, the Exchange has not experienced systems problems or received formal customer complaints related to index options trading on AUTOM.

Moreover, the Exchange frequently uses the term "options" to include both equity and index options. For example, the "Options Committee" governs both equity options and index options trading, and "options trading volume" includes index options as well. In addition, the use of the phrase "equity options" to include index options is not limited to AUTOM. For instance, "equity options floor"[7] and "equity options examination"[8] are common terms. Furthermore, the date when AUTO–X was extended to index options corresponds to Commission approval of the use of AUTO–X for "all Phlx equity options."[9] Accordingly, it appears that index options were added to AUTOM as part of the extension of both AUTOM and AUTO–X to "all Phlx equity options."

Although Commission orders approving various amendments to and extensions of the AUTOM pilot refer to "equity options," the proposed rule changes filed by the Exchange generally describe AUTOM as an order routing and delivery system for "options." In addition, the Phlx has issued memoranda to the trading floor regarding the use of AUTOM/AUTO–X for index options on many occasions, including periodic lists of the maximum size eligibility for AUTO–X. The Phlx also notes that other exchanges permit the use of automatic order delivery and executions systems for index options.[10]

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by codifying index options into the AUTOM pilot program. The Exchange believes that index option orders benefit from the advantages of AUTOM, including efficient and prompt order delivery and execution.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. Specifically, the Exchange is proposing to codify the eligibility of index options, an existing Exchange practice, for an existing Commission-approved system. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Phlx–94–40 and should be submitted by November 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27487 Filed 11–4–94; 8:45 am]

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[7] There is no separate "index options floor."

[8] This floor member qualification examination tests trading rules applicable to index options as well.

[9] *See* Securities Exchange Act Release No. 28978, *supra* note 3.

[10] *See e.g.*, CBOE Rule 24.17.

[11] 17 CFR 200.30–3(a)(12) (1992).

[Rel. No. IC–20667; File No. 812–9154]

DFA Investment Dimensions Group Inc. et al.

October 31, 1994.

AGENCY: U.S. Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: DFA Investment Dimensions Group Inc. (the "Fund"), Dimensional Fund Advisors Inc. ("DFA"), and certain life insurance companies ("Participating Insurance Companies") and their separate accounts ("Separate Accounts")—the Fund, DFA, the Participating Insurance Companies, and the Separate Accounts are referred to herein collectively as the "Applicants."

RELEVANT 1940 ACT SECTION: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Fund to be offered and sold to variable annuity and variable life insurance separate accounts issued by both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on August 10, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and by serving the Applicants (in care of the Fund or DFA) with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 25, 1994, and should be accompanied by proof of service on the Fund or DFA, in the form of an affidavit or, for lawyers, a certificate of

service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Stradley, Ronon, Stevens & Young, Great Valley Corporate Center, 30 Valley Stream Parkway, Malvern, PA 19355, Attn: Stephen W. Kline, Esq.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. DFA is a corporation organized under the laws of Delaware, and is registered as an investment adviser under the Investment Advisers Act of 1940. DFA serves as investment adviser for the Fund.

2. The Fund is a Maryland corporation registered under the 1940 Act as an open-end, diversified management investment company. The Fund currently consists of, and offers shares of common stock ("shares") in, nineteen separate investment portfolios, each of which has its own investment objectives and policies. Shares of two of those portfolios presently are offered only to a separate account of National Home Life Assurance Company which, in connection with its issuance of variable annuity contracts, is registered as a unit investment trust under the 1940 Act.

3. The Fund intends to offer shares of its portfolios to Separate Accounts of additional insurance companies—including insurance companies that are not affiliated with National Home Life Assurance Company—and to serve as the investment vehicle for various types of insurance products, including variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively referred to herein as "variable contracts"). Such Participating Insurance Companies will establish their own separate accounts and design their own variable annuity or variable life insurance contracts. It is anticipated that Participating Insurance Companies will rely on Rules 6e–2 or 6e–3(T) under the 1940 Act, as appropriate, with respect to their scheduled premium and flexible premium variable life insurance contracts; some Participating Insurance Companies may rely on individual exemptive orders as well.

4. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is referred to herein as "mixed funding." The use of a common management company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

5. Applicants submit that making the Fund available for "mixed" and "shared" funding will encourage more insurance companies to offer variable contracts, and that this should result in increased competition with respect to both variable contract design and pricing, which, in turn, can be expected to result in more product variation and lower charges. Applicants submit that "mixed" and "shared" funding should provide several benefits to variable contract owners, including, among other things: elimination of a sufficient portion of the costs of establishing and administering separate funds; and making a greater amount of assets available for investment, thereby promoting economies of scale, permitting increased safety through greater diversification, and making the addition of new portfolios more feasible.

6. Applicants see no significant legal impediment to permitting "mixed" and "shared" funding. Nor do Applicants believe that "mixed" and "shared" funding will have any adverse federal income tax consequences. Applicants represent that separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Accordingly, Applicants request an order of the Commission exempting the Participating Insurance Companies and their Separate Accounts (and, as necessary, any principal underwriter and depositor of each such Separate Account) from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit "mixed" and "shared" funding.

Applicants' Legal Analysis

1. Applicants request relief under Section 6(c) of the 1940 Act for the class of insurers and Separate Accounts investing in the Fund (and principal underwriters and depositors of such Separate Accounts). Applicants represent that there is ample precedent, in a variety of contexts, for granting exemptive relief not only to applicants in a given case, but also to members of the class not currently identified that may be similarly situated in the future. Applicants further represent that such class relief has been granted from a number of the provisions of the 1940 Act. Applicants note that the Commission staff will have an opportunity to review the compliance by Participating Insurance Companies with the conditions of the requested order at the time each Separate Account files its registration statement.

2. Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, only if the separate account is organized as a unit investment trust, all of the assets of which consist of the shares of one or more registered investment companies ("underlying fund(s)") which offer their shares "*exclusively* to variable life insurance separate accounts of the life insurer or any affiliated life insurance company" (emphasis supplied). The exemptions are not available to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same insurance company or any unaffiliated insurance company. Nor is the relief granted by Rule 6e–2(b)(15) available if the underlying fund also offers its shares to separate accounts funding variable contracts of unaffiliated life insurance companies. In short, Rule 6e–2 permits neither "mixed" nor "shared" funding.

3. Rule 6e–3(T)(b)(15) provides exemptions similar to those provided by Rule 6e–2(b)(15), only if the separate account is organized as a unit investment trust, all of the assets of which consist of shares of underlying funds which offer their shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account" (emphasis supplied). In short, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, but it does not permit shared funding.

4. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2) of the 1940 Act.

5. Rules 6e-2(b)(15) (i) and (ii) and 6e-3(T)(b)(15) (i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on "mixed" and "shared" funding imposed by the 1940 Act and the rules promulgated thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that participate directly in the management of the underlying registered management investment company.

6. Applicants state that the partial relief from the requirements of Section 9 of the 1940 Act granted in Rules 6e-2(b)(15) and 6e-3(T)(B)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that Rules 6e-2(b)(15) and 6e-3(T)(b)(15) recognize that neither the protection of investors nor the purposes fairly intended by the policy and provisions of the 1940 Act requires the application of the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants further state that Rules 6e-2(b)(15) and 6e-3(T)(b)(15) recognize that it is unnecessary to apply Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Fund as the funding medium for variable contracts.

7. Applicants assert that no regulatory purpose is served by extending the Section 9(a) monitoring requirements in the event of "mixed" or "shared" funding. In this regard, Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Fund; those individuals who currently participate in the management or administration of the Fund will remain the same regardless of which Separate Accounts or insurance companies use the Fund. For these reasons, Applicants submit that applying the monitoring requirements of Section 9(a) because of investment by separate accounts of other insurers would be unjustified and would not serve any regulatory purpose. Applicants further submit that increased monitoring costs would reduce the net rates of return realized by contract owners.

8. Rules 6e-2(b)(15) and 6e-3(T)(b)(15) give the Participating Insurance Companies the right to disregard voting instructions of contract holders. More specifically, Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide partial exemption from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares.

9. Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A)(*1*) provide that the insurance company may disregard the voting instructions of it owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e-2 and 6e-3(T)).

10. Rules 6e2(b)(15)(iii)(B) and 6e3(T)(b)(15)(iii)(A)(*2*)[1] provide that the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in such insurance company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B) or (b)(7)(ii)(C) of Rules 6e-2 and 6e-3(T)).

11. Applicants represent that in the case of a change in the insurance company's investment policies, the insurance company, in order to disregard contract owner voting instructions, must make a good-faith determination that such a change would violate state law, or would result in investments that either would be inconsistent with the investment objectives of the separate account or would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Applicants represent that in the case of a change of an investment adviser, the insurance company, in order to disregard contract owners' voting instructions, must make a good-faith determination that either: (a) The adviser's fees would exceed the maximum rate that may be charged against the separate account's assets; or (b) the proposed adviser may be expected to employ investment techniques that either (i) would vary from the general techniques used by the current adviser, or be used to manage the investments in a manner inconsistent with the investment objectives of the Separate Account, or (ii) would result in investments that vary from certain standards.

12. Applicants submit that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. Applicants also state that the potential for disagreement is limited by the requirements in Rule 6e-2 and 6e-3(T) that the Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions:

1. A majority of the directors of the Fund shall consist of persons who are not "interested persons" of the Fund (as defined in Section 2(a)(19) of the 1940 Act, the rules promulgated thereunder, and as modified by any applicable orders of the Commission). If this condition is not met by reason of the death, disqualification, or bona-fide resignation of any director(s), then the operation of this condition shall be suspended: (a) For a period of 45 days, if the vacancy or vacancies may be filled by the directors; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The board of directors of the Fund will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or

[1] Applicants represent that the application will be amended during the notice period to refer to Rule 6e-3(T)(15)(b)(iii)(A)(*2*), rather than 6e3(T)(b)(15)(iii)(B), in the discussion under the heading "Pass-Through Voting."

securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund portfolio are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

3. Participating Insurance Companies and DFA will report any potential or existing conflicts to the board of directors. Participating Insurance Companies and DFA will provide the directors with all information reasonably necessary for them to consider any issues raised by such conflicts and, more generally, will be responsible for assisting the directors in carrying out their responsibilities under these conditions. In addition, each Participating Insurance Company will inform the directors whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts to, and to assist, the directors will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund. These responsibilities will be carried out with a view only to the interests of the contract owners.

4. If a majority of the board of directors, or a majority of the disinterested directors, determines that a material irreconcilable conflict exists, then the relevant insurance companies, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps may include: (a) Establishing a new registered management investment company or managed separate account; or (b) withdrawing from the Fund or any of its portfolios the assets allocable to some or all of the Separate Accounts, and reinvesting such assets in a different investment medium (including another portfolio of the Fund), or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group *i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering the affected contract owners the option of making such a change.

5. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the Fund's election, to withdraw the investment in the Fund by that insurer's Separate Account; no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of the directors' determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participating in the Fund. These responsibilities will be carried out with a view only to the interests of contract owners.

6. For purposes of the condition set forth in paragraphs 4 and 5 above, a majority of the disinterested directors shall determine whether the proposed action adequately remedies any material irreconcilable conflict. In no event will the Fund or DFA be required to establish a new funding medium for any variable contract. The condition (paragraphs 4 and 5) will not be construed to require a Participating Insurance Company to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of the contract owners adversely affected in a material way by the material irreconcilable conflict.

7. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a majority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the Fund's election, to withdraw the investment in the Fund by the insurer's Separate Account; no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of the determination (by the directors of the Fund) of a material irreconcilable conflict, and to bear the costs of such remedial action, shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund. These responsibilities will be carried out with a view only to the interest of contract owners.

8. For purposes of the condition set forth in paragraph 7 above, a majority of the disinterested directors shall determine whether any proposed action adequately remedies any material irreconcilable conflict. The Fund and the Fund's investment adviser will not be required to establish a new funding medium for any variable contract. Moreover, no Participating Insurance Company shall be required by that condition (paragraph 7) to establish a new funding medium for any variable contract if any offer to do so has been declined by vote of a majority of the contract owners adversely affected in a material way by the material irreconcilable conflict.

9. The determination by the directors of the Fund of the existence of a material irreconcilable conflict and the implications of that conflict shall be made known promptly, in writing, to all Participating Insurance Companies.

10. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners as long as the Commission continues to interpret the 1940 Act to require pass-through voting privileges for variable contract owners. Accordingly, Participating Insurance Companies will vote shares of the Fund held in their respective Separate Accounts in a manner consistent with voting instructions timely-received from contract owners. Each Participating Insurance Company will vote shares of the Fund held in its respective Separate Accounts for which no voting instructions from contract owners are timely-received, as well as shares of the Fund which the Participating Insurance Company owns, in the same proportion as those shares of the Fund for which voting instructions from contract owners are timely-received. Each Participating Insurance Company shall be responsible for assuring that its Separate Accounts participating in the Fund calculate voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund.

11. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders. More specifically, the Fund will either: (a) Provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings); or (b) comply with Sections 16(a) and 16(c) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with

respect to periodic election of directors, and with whatever rules the Commission may promulgate with respect thereto.

12. The Fund shall disclose in its prospectus that: (a) It is intended as a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies; (b) material irreconcilable conflicts between the interests of contract owners of all Separate Accounts investing in the Fund may arise; and (c) the directors of the Fund will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict. The Fund will notify all Participating Insurance Companies that Separate Account prospectus disclosure regarding potential risks of "mixed" and "shared" funding may be appropriate.

13. If and to the extent that Rules 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder with respect to "mixed" or "shared" funding on terms and conditions materially different from any exemptions granted in the order requested in this application, the Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2, 6e–3(T), or Rule 6e–3, as such rules are applicable.

14. At least annually, the Participating Insurance Companies and/or DFA shall submit to the directors of the Fund such reports, materials, or data as the directors reasonably may request so that the directors may fully carry out the obligations imposed upon the board of directors by the conditions contained in this application; said reports, materials, and data shall be submitted more frequently if deemed appropriate by the directors. The obligations of the Participating Insurance Companies to provide these reports, materials, and data to the directors of the Fund upon reasonable request shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund.

15. All reports of potential or existing conflicts received by the directors of the Fund, and all actions by the directors with regard to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the directors or other appropriate records. Such minutes and other records shall be made available to the Commission upon request.

Conclusion

For the reasons stated above, Applicants submit that the requested exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2 and 6e–3(T) thereunder are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Accordingly, Applicants submit that the requested exemptions meet the applicable statutory standards of Section 6(c) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27446 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20668; 812–8888]

Fidelity Investment Life Insurance Company, et al.

October 31, 1994.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Fidelity Investments Life Insurance Company ("FILI"), Fidelity Investments Variable Annuity Account I (the "Variable Account"), and Fidelity Brokerage Services, Inc. ("FBSI") (collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting, on a prospective basis, the deduction of mortality and expense risk charges from (1) the assets of the Variable Account with respect to certain flexible premium deferred variable annuity contracts ("Contracts") and contracts offered in the future that are substantially similar in all material respects to the Contracts ("future contracts") and (2) the assets of similar separate accounts established and maintained by FILI ("FILI Accounts") with respect to future contracts. Applicants also request that the exemptive relief granted to FBSI extend to any other broker-dealer that is a member of the National Association of Securities Dealers and controlling, controlled by, or under common control with FILI ("FILI Broker-Dealers"), that may serve in the future as principal underwriter for the Contracts or future contracts offered through the Variable Account or the FILI Accounts.

FILING DATE: The application was filed on March 11, 1994 and amended on October 4, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on November 25, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Fidelity Investments Life Insurance Company, 82 Devonshire Street, Mail Zone F5E, Boston, Massachusetts 02109, Attention: David J. Pearlman, Esq.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel at (202) 942–0670 or C. Gladwyn Goins, Associate Director at (202) 942–0665, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. FILI is a stock life insurance company organized under the laws of the State of Utah. FILI is a wholly-owned subsidiary of FMR Corp., the parent company for the group of financial services companies known as Fidelity Investments.

2. The Variable Account was established by FILI as a separate account under the laws of the state of Pennsylvania on July 22, 1987 for the purpose of funding certain variable annuity contracts issued by FILI. FILI may, in the future issue other contracts funded by the Variable Account or other FILI Accounts and deduct mortality and expense risk charges under those contracts in reliance upon the requested exemptive order, if granted. Applicants undertake that such future contracts

will be substantially similar in all material respects to the Contracts.

3. FBSI is the principal underwriter for the Contracts. In 1988, FILI, the Variable Account and Fidelity Distributors Corp. ("FDC"), which at that time served as principal underwriter for the Contracts, obtained an exemptive order (the "1988 Order") permitting the deduction of mortality and expense risk charges under the Contracts.[1] On January 1, 1990, as part of an internal consolidation, the activities of FDC and FBSI were combined and FBSI became principal underwriter for the Contracts. All aspects of the Contracts have remained precisely the same as was represented in the application pursuant to which the 1988 Order was granted and Contract owners have continued to pay precisely the same fees as they paid (or would have paid) when FDC served as principal underwriter.

4. The Contracts are flexible premium deferred variable annuities. Annuity payments can be on a fixed basis, a variable basis, or a combination of both. If the Annuitant dies prior to the annuity date and prior to age 70, FILI will pay a death benefit equal to the greater of (1) the purchase payments made, less any withdrawals and charges thereon and (2) the Contract value as of the end of the valuation period in which proof of death is received at the service center.

5. On each Contract anniversary before the annuity date, FILI imposes an annual maintenance charge of $30. FILI currently waives this charge for any Contract under which total payments, less withdrawals, equals at least $25,000 and for contracts purchased after May 1, 1990 in exchange for a Fidelity Variable Annuity contract (another contract formerly issued by FILI). FILI reserves the right to increase this annual charge to not more than $50, if warranted by expenses, and to assess the charge against all contracts other than those issued in exchange for a Fidelity Variable Annuity. The charge assessed after the annuity date for a particular contract will never be greater than the charge in effect just before the annuity date. FILI also deducts a daily charge from the assets of the subaccounts of the Variable Account equivalent to an effective annual rate of .25%. Applicants state that the administrative charges contain no element of anticipated profit and their deduction meets the standard specified in Rule 26a–1 under the 1940 Act.

[1] *See Fidelity Investments Life Insurance Co., et al.*, Release Nos. IC–16615 (Oct. 28, 1988) (Notice) and IC–16656 (Nov. 28, 1988) (Order).

6. FILI deducts an asset charge, computed daily, for its assumption of mortality and expense risks. This charge is made by deducting daily from the assets of each subaccount attributable to the Contracts a percentage of those assets equal to an effective annual rate of .75%. Of this .75% charge, .65% is estimated to be for assuming mortality risks and .10% is estimated to be for assuming expense risks. The mortality risk FILI bears is that of making annuity payments for the life of an annuitant no matter how long that may be. FILI also bears a mortality risk by guaranteeing the death benefit if the annuitant dies prior to the annuity date. The expense risk is the risk that the costs of issuing and administering the Contracts will be greater than expected when setting the administrative charge. FILI will realize a gain from the charge for these risks to the extent that such charge is not needed to provide for benefits and expenses under the Contracts.

7. A surrender charge is assessed on purchase payments withdrawn from the Contract within the first five Contract years and may be assessed on annuitizations within the first three Contract years. The surrender charge is 5% during the first Contract year and declines one percent per year thereafter. No surrender charge is imposed on total withdrawals in each Contract year of up to 10% of purchase payments (less amounts previously withdrawn that were subject to a surrender charge). Applicants expect that the surrender charge will not be sufficient to cover the expenses incurred in selling the Contracts. To the extent that the surrender charge is not sufficient, FILI will pay these expenses from its general assets which may include proceeds from the mortality and expense risk charge.

Applicants' Legal Analysis

1. Applicants request exemptive relief on a prospective basis from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction of the mortality and expense risk charges under the Contracts and any future contracts offered through the Variable Account or through similar separate accounts established and maintained by FILI, whether currently existing or created in the future. Applicants also request that such exemptive relief extend to any other National Association of Securities member broker-dealer controlling, controlled by or under common control with FILI, whether existing or created in the future, that may serve in the future as principal underwriter of the Contracts or of future contracts offered through the Variable Account or other FILI Accounts.

2. Section 27(c)(2) of the 1940 Act prohibits the issuer of a periodic payment plan certificate, and any depositor or underwriter for such issuer, from selling such periodic payment plan certificate unless proceeds of payments on such certificates (other than sales loads) are held under an indenture or agreement containing specified provisions. Section 26(a)(2) and the Rules thereunder do not permit a deduction from the assets of a separate account for mortality and expense risk charges.

3. Applicants submit that their request for an order that applies to (1) contracts offered in the future by the Variable Account or other FILI Separate Accounts that are substantially similar in all material respects to the Contracts described in the application, and (2) other FILI Broker-Dealers which may serve in the future as principal underwriter in respect of the Contracts or of future contracts offered by the Variable Account or other FILI Separate Accounts, is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity contract market by eliminating the need for FILI to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing its use of its resources. The delay and expense involved in having to repeatedly seek exemptive relief would impair FILI's ability to effectively take advantage of business opportunities as they arise. Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If FILI were required to repeatedly seek exemptive relief with respect to the same issues addressed in the application, investors would not receive any benefit or additional protection thereby.

4. Applicants submit that FILI is entitled to reasonable compensation for its assumption of mortality and expense risks and that the change in principal underwriter in no way affects the findings the SEC made in granting the 1988 Order. Applicants represent that the charge of .75% made under the Contracts for mortality and expense risks is consistent with the protection of investors because it is a proper insurance charge.

5. FILI further represents that the charge of .75% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon FILI's analysis of publicly available

information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. FILI will maintain at its executive office, and make available to the SEC upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

6. Applicants represent that prior to making available any future contracts, they will make a determination that the mortality and expense risks under any such contract will be within the range of industry practice for comparable contracts. Applicants will also maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying such determination. Further, such mortality and expense risk charge would not exceed 1.25% of the daily assets of the Variable Account or other FILI Separate Account.

7. Applicants acknowledge that if a profit is realized from the mortality and expense risk charges, all or a portion of such profit may be viewed as being used to cover distribution expenses. Notwithstanding the foregoing, FILI has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by FILI at its executive office and which will be made available to the Commission upon request.

8. FILI represents that the Variable Account and other FILI Separate Accounts will invest only in a management investment company which has undertaken, in the event such company adopts a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of such open-end management investment company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Conclusion

Applicants submit that the exemptive relief requested in the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27447 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20674; 812–9240]

Government Securities Equity Trust, et al.; Notice of Application

November 1, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Government Securities Equity Trust (the "Trust"), Prudential Securities Incorporated (the "Sponsor"), Prudential Equity Fund, Inc., Prudential Mutual Fund Management, Inc. ("PMF"), Prudential Mutual Fund Distributors, Inc. ("PMFD"), and any open-end management investment companies (including any portfolios or series thereof), other than money market or no-load funds, presently advised by PMF or having as their distributor PMFD or the sponsor, or that may in the future be advised by PMF or have as their distributor PMFD or the Sponsor or any entity controlling, controlled by, or under common control with PMF or PMFD or the Sponsor (the "Funds").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act to grant an exemption from sections 14(a) and 19(b) of the Act and rule 19b–1 thereunder; under sections 11(a) and (c) to permit certain offers of exchange; and under section 17(d) and rule 17d–1 to permit certain affiliated transactions.

SUMMARY OF APPLICATION: Applicants request an order: (a) Permitting the respective Series to invest in shares of an open-end investment company and U.S. Treasury zero coupon obligations; (b) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust; (c) permitting the Trust to distribute capital gains resulting from redemptions of Fund shares within a reasonable time after receipt; (d) permitting certain offers of exchange involving the Trust; and (e) permitting certain affiliated transactions involving the Trust.

FILING DATES: The application was filed on September 22, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Prudential Securities Incorporated, Prudential Equity Fund, Inc., Prudential Mutual Fund Management, Inc., and Prudential Mutual Fund Distributors, Inc., One Seaport Plaza, 199 Water Street, New York, New York, 10292.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Law Clerk, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end management investment companies registered under the Act. Each Fund has entered into an investment advisory or management agreement with PMF, and distribution agreements with PMFD and the Sponsor under which PMFD acts as principal underwriter for Class A Shares of the Fund and the Sponsor acts as principal underwriter for Class B and Class C Shares of the Fund. Shares of the Funds are offered with front-end sales loads and, in certain instances, with contingent deferred sales charges ("CDSC") imposed in accordance with the terms of an exemptive order (the "CDSC Order").[1] Each of the existing Funds has adopted a rule 12b–1 plan.

2. The Trust will be registered under the Act as a unit investment trust and will offer units in series ("Trust Series"), each of which will contain shares of one Fund that is normally

[1] Investment Company Act Release Nos. 19400 (Apr. 12, 1993) (notice) and 19464 (May 10, 1993) (order).

offered with a sales load, and U.S. Government zero coupon obligations. The Trust's objective is to provide protection of capital while providing for capital appreciation through investments in zero coupon obligations and shares of the Funds. Each Trust Series will be organized pursuant to a reference trust agreement that will incorporate a trust indenture and agreement relating to the entire Trust (collectively, the "Trust Agreement") and that will name a qualified bank as trustee ("Trustee").

3. Each Trust Series will be sponsored by the Sponsor, which will perform the functions typical of unit investment trust sponsors. These functions will include depositing Fund shares in the Trust; acquiring zero coupon obligations and depositing them in the Trust; arranging for the evaluation of the zero coupon obligations; offering units to the public; and maintaining a secondary market in units. The Sponsor expects to deposit in the Trust substantially more than $100,000 aggregate value of zero coupon obligations and Fund shares.

4. Trust units will be offered for sale to the public through the final prospectus by the Sponsor. Trust Series are intended to be offered to the public initially at prices based on the net asset value of the Fund shares selected for deposit in that Trust Series, plus the offering side value of the zero coupon obligations contained therein, plus a sales charge. The Trust will redeem units at prices based on the aggregate bid side evaluation of the zero coupon obligations and the net asset value of the Fund shares.

5. With the deposit of the securities in the Trust Series on the initial date of deposit, the Sponsor will have established a proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Trust Series. The Sponsor will be permitted under the Trust Agreement to deposit additional securities, which may result in a corresponding increase in the number of units outstanding. Such units may be continuously offered for sale to the public by means of the prospectus.

6. The Trust will be structured so that each Trust Series will contain a sufficient amount of zero coupon obligations to assure that, at the specified maturity date for such Trust Series, the purchaser of a unit would receive back the approximate total amount of the original investment in the Trust, including the sales charge. Such investor would receive more than the original investment to the extent that the underlying Fund made any distributions during the life of the Trust and/or had any value at the maturity of the Trust Series.

7. The Sponsor intends to maintain a secondary market for Trust units, but is not obligated to do so. The existence of such a secondary market will reduce the number of units tendered to the Trustee for redemption and thus alleviate the necessity of selling portfolio securities to raise the cash necessary to meet such redemptions. In the event that the Sponsor does not maintain a secondary market, the Trust Agreement will provide that the Sponsor will not instruct the Trustee to sell zero coupon obligations from any Trust Series until shares of the Fund have been liquidated in order not to impair the protection provided by the zero coupon obligations, unless the Trustee is able to sell such zero coupon obligations and still maintain at least the original proportionate relationship to unit value. The Trust Agreement also provides that zero coupon obligations cannot be sold to meet Trust expenses.

8. The Trust has taken certain steps to reduce the impact of the termination of a Trust Series on the Fund deposited therein. First, the Trust will, with respect to all unitholders still holding units at scheduled termination and to the extent desired by such unitholders, transfer the registration of their proportionate number of Fund shares from the Trust to a registration in the investor's name in lieu of redeeming such shares. Second, the Fund will offer all such unitholders the option of investing the proceeds from the zero coupon obligations in Fund shares at net asset value (*i.e.*, without the imposition of the normal sales load). The Fund also will offer unitholders the option of investing all distributions from the Trust during the life of the Trust Series in Fund shares at net asset value. Thus, it is anticipated that many of the unitholders will become and remain direct shareholders of the Fund and that many will elect to invest their proceeds of the Trust Series in an account of the Fund.

9. The sales load that normally would be applicable on sales of underlying Fund shares will be waived, whether an upfront or deferred sales charge. In accordance with the CDSC Order, applicants will waive any otherwise applicable CDSC where: (a) the Sponsor has purchased such shares in connection with the sale of units; (b) the proceeds of zero-coupon obligations upon termination of a Trust, and distributions from a Trust made during the existence of the Trust, have been reinvested by a unitholder in additional Fund shares; and (c) a Trust at maturity has transferred a unitholder's proportionate number of Fund shares from the Trust to a registration in the unitholder's name in lieu of redeeming such shares. Any waiver will comply with the conditions in paragraphs (a) through (d) of rule 22d–1 of the Act. Moreover, the Sponsor will rebate to the Trustee any payments it receives in respect of units under any rule 12b–1 plans adopted by the Funds.

Applicants' Legal Analysis:

1. Section 14(a) of the Act requires that investment companies have $100,000 of net worth prior to making a public offering. The Trust will have an initial net worth in excess of $100,000 invested in zero coupon obligations and Fund shares. Applicants recognize, however, that by withdrawing certificates representing the entire beneficial ownership of the Trust, the Sponsor may be deemed to be reducing the Trust's net worth below the requirements of section 14(a). Applicants believe that an exemption is appropriate. Applicants also intend to comply in all respects with the requirements of rule 14a–3, which provides an exemption from section 14(a), except that the Trust would not restrict its portfolio to "eligible trust securities."

2. Section 19(b) of the Act and rule 19b–1 thereunder provide that, except under limited circumstances, no registered investment company may distribute long-term capital gains more than once every twelve months. Applicants request an exemption from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the redemption of Fund shares to be distributed to unitholders along with the Trust's regular distributions. Applicants believe that the requested exemption is consistent with the purposes of section 19(b) and rule 19b–1 because the dangers of manipulation of capital gains and confusion between capital gains and regular income distributions does not exist in the Trust. The Trust and its Sponsor have substantially no control over events, other than the selection of the portfolio, which might trigger capital gains (*i.e.*, the tendering of units for redemption). Moreover, because principal distributions are clearly indicated in accompanying reports to unitholders as a return of principal, applicants believe that the danger of confusion is not present in the operations of the Trust.

3. Section 11(a) of the Act makes it unlawful for any registered open-end investment company or principal underwriter for such company to make certain offers of exchange on any basis

other than the relative net asset value of the securities to be exchanged, unless the terms of the exchange offer have first been approved by the SEC. Section 11(c) provides that section 11(a) will be applicable to any type of exchange offer involving securities of a registered unit investment trust, irrespective of the basis of exchange. Applicants request an order pursuant to section 11 (a) and (c) approving the termination option. At the termination of the Trust, unitholders still holding units at maturity will have the option of either transferring the registration of their proportionate number of Fund shares from the Trust to a registration in the investor's name, or receiving a cash distribution. Such unitholders also will have the option of either reinvesting the proceeds of the zero-coupon obligations in additional shares of the Fund (without imposition of the normal sales load), or receiving a cash distribution. The exchange will be made on the basis of the net asset value of the Fund shares.

4. Section 17(d) of the Act and rule 17d–1 thereunder make it unlawful for any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of either of them, acting as a principal, to engage in a joint transaction with the investment company unless the joint transaction has been approved by the SEC. Applicants' proposed arrangements may be a joint transaction under these provisions. Applicants believe that the proposed arrangements are consistent with the provisions, policies, and purposes of the Act, and the participation by each registered investment company is not on a basis less advantageous than that of other participants.

5. Applicants do not request relief under section 12(d)(1) of the Act. Section 12(d)(1) limits purchases by registered investment companies of securities issued by other investment companies. Section 12(d)(1)(E) provides, however, that section 12(d)(1) shall not apply to securities purchased by a registered unit investment trust if the securities are the only "investment securities" held by the trust. Applicants believe that the U.S. Treasury zero coupon obligations are not "investment securities" for purposes of section 12(d)(1)(E)[2] and that the Fund shares are the only "investment securities" which the Trust will hold. Accordingly, they do not believe relief from section 12(d)(1) is necessary.

[2] Equity Securities Trust, (pub. avail. Jan. 19, 1994).

Applicants' Conditions

Applicants agree to the following as conditions to the granting of the requested order:

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by unitholders, or to pay Trust expenses should distributions received on Fund shares and rebated rule 12b–1 fees prove insufficient to cover such expenses.

2. Any rule 12b–1 fees received by the Sponsor in connection with the distribution of Fund shares to the Trust will be immediately rebated by the Sponsor to the Trustee.

3. All Trust Series will be structured so that their maturity dates will be at least thirty days apart from one another.

4. Applicants will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

5. Shares of a Fund which are held by a Series of the Trust will be voted by the Trustee of the Trust, and the Trustee will vote all shares of a Fund held in a Trust Series in the same proportion as all other shares of that Fund not held by the Trust are voted.

6. Any shares of the Funds deposited in any Trust Series or any shares acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination will be made without imposition of any otherwise applicable sales load and at net asset value.

7. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of a reinvestment option will disclose that shareholders who elect to invest in Fund shares will incur a rule 12b–1 fee.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27488 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20669; No. 812–9202]

The Travelers Life and Annuity Company, et al.

October 31, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Travelers Life and Annuity Company ("Travelers"), The Travelers Fund VA For Variable Annuities ("Fund VA") and Other Separate Accounts ("Other Accounts") (collectively, "Separate Accounts"), and Travelers Equities Sales, Inc. ("Sales") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Separate Accounts of a mortality and expense risk charge in connection with the offer and sale of certain flexible premium deferred variable annuity contracts and certificates offered by Travelers.

FILING DATE: The application was filed on August 29, 1994. An amended and restated application was filed on October 18, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 24, 1994 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Julie E. Rockmore, Counsel and Assistant Secretary, The Travelers Life and Annuity Company, One Tower Square, Hartford, Connecticut 06183.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Travelers is a stock life insurance company currently licensed to conduct a life insurance and annuity business in all states except Alabama, Hawaii, Kansas, Maine, New Hampshire, New Jersey, North Carolina, Tennessee, Texas, Wyoming and New York. Travelers currently is seeking to obtain

licensure in the remaining states, except New York. Travelers is a wholly owned subsidiary of The Travelers Insurance Company, an indirect wholly owned subsidiary of The Travelers, Inc. ("Travelers, Inc.").

2. Fund VA is a separate account established by Travelers to fund certain individual and group flexible premium deferred variable annuity contracts and certificates ("Current Contracts"). Travelers also may issue through Fund VA, or Other Accounts established in the future, other individual or group flexible premium deferred variable annuity contracts and certificates that are substantially identical in all material respects to the Current Contracts ("Future Contracts," together with Current Contracts, the "Contracts").

3. Fund VA has filed with the Commission on Form N–8A a Notification of Registration as a unit investment trust under the 1940 Act and a registration statement on Form N–4 under the Securities Act of 1933 in order to register as securities the Current Contracts. Future Contracts issued through Fund VA or any Other Accounts will be registered as securities under the 1933 Act. Other Accounts established in the future by Travelers to fund the Future Contracts will be registered with the Commission as unit investment trusts.

4. Fund VA currently is subdivided into twenty-one subaccounts ("Subaccounts"), each investing exclusively in shares of corresponding registered open-end management investment companies ("Underlying Funds"). Other Subaccounts may be created in the future to invest in additional Underlying Funds which may now or in the future be made available. Each Subaccount of any Other Account established by Travelers in the future will invest exclusively in the shares of a specific corresponding open-end management investment company registered with the Commission. Shares of the Underlying Funds will be sold to Fund VA at net asset value. Each Underlying Fund is responsible for all of its own expenses, including applicable investment advisory fees.

5. Sales, an indirect wholly-owned subsidiary of Travelers, Inc. and an affiliate of Travelers, will be the principal underwriter of the Contracts. Sales is registered as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940.

6. The Contracts are designed for use in connection with retirement plans that may qualify for favorable federal income tax treatment under Sections 408, 403(b), 401(a), 401(k) and 457 of the Internal Revenue Code of 1986, as amended, and for non-qualified group and/or individual contracts.

7. The Contracts provide for the allocation of purchase payments to the Subaccounts and/or to a fixed account funded by the general assets of Travelers. Certain minimum purchase payments are required under the Contracts, which also provide for annuity payments on a fixed or variable basis. Fixed payments are based on the tables shown in the Contracts. Variable annuity payments will increase or decrease during the payment period. The first payment is based on the tables shown in the Contracts. Subsequent payments will increase or decrease depending on the net investment performance of the underlying funds chosen for investment during the annuity payment period relative to the 3.5% assumed interest rate used to determine the tables shown in the Contracts.

Prior to annuitization, Contract owners may transfer all or part of the Contract Value between Subaccounts at no cost. Currently, there are no restrictions on the frequency of transfers, but the right is reserved to limit transfers to no more than one in any six-month period. Currently, no charge is made for transfers among the Portfolios. The death benefit paid under individual Contracts and certain group Contracts for a death of the Annuitant prior to age 75 will equal the greatest of: (a) Contract Value, less applicable premium tax or outstanding cash loans; (b) total purchase payments under the Contract, less prior surrenders or cash loans; or (c) Contract Value on the most recent fifth contract date anniversary on or immediately preceding the date of receipt of proof of death by Travelers, less applicable premium tax, outstanding cash loans or prior surrenders not previously deducted. In the event of the death of an Annuitant on or after age 75, the death benefit will be Contract Value, less applicable premium tax or outstanding cash loans.

8. Certain charges and deductions are assessed under the Contracts. An administrative charge of $15 will be deducted from Contract Value semi-annually for each individual Contract and for each participant account under a group Contract, and *pro rata* upon full or partial surrender or other termination, death of the annuitant, or commencement of the annuity payment period. This charge is to reimburse Travelers for its actual administrative costs expected to be incurred over the life of the Contracts. Administrative charges are guaranteed not to increase during the life of the Contracts.

9. Applicable premium taxes, currently ranging from 0.5% to 5%, will be deducted from Contract Value upon death, surrender, annuitization, or from Purchase Payments at the time they are made under the Contract, but no earlier than when Travelers incurs a tax liability under state law.

10. Contract owners may elect to participate in an asset allocation program ("CHART Program") provided under the Contracts by entering into a separate investment advisory agreement ("Agreement") with Copeland Financial Services, Inc. ("Copeland"). Copeland, an affiliate of Travelers, is an investment adviser registered under the Investment Advisers Act of 1940.

Under the CHART Program, purchase payments and Contract values may be allocated among certain Subaccounts. Travelers will be authorized under the Agreement to redeem, in a non-taxable transaction, a sufficient number of units from a Contract owner's Contract Value to pay a quarterly fee, which will be paid directly to Copeland. In addition to a $30 initial fee, Copeland charges for its advisory services a maximum of 1.50% of the assets subject to the CHART Program. This fee currently is reduced by 0.25%, the amount of the fee paid to the investment manager of the relevant Underlying Funds, and further reduced for assets over $25,000 and for certain plans. Applicants represent that the fee payment arrangement will be operated in a manner substantially identical to that described in a no-action letter, *Travelers Insurance Company, et al.* (IP–7–93, avail. Sept. 3, 1993).

11. No sales charge is deducted from premium payments under the Contracts. However, to pay Travelers for its costs of distributing the Contracts, a contingent deferred sales charge ("CDSC") equal to 5% of a purchase payment will be assessed in the first five years following such payment for certain full or partial surrenders. After the first contract or certificate year, Contract owners may surrender up to 10% of their contract value as of the first valuation date of any given contract year without incurring a CDSC ("Free Withdrawal"). Free Withdrawals do not apply to full surrenders, and, under IRA plans, are only available after the annuitant has attained age 59½. Additionally, the CDSC is not assessed on Contract earnings which equal (a) Contract Value, minus (b) the sum of all purchase payments not previously surrendered, and minus (c) the amount of the Free Withdrawal, if applicable.

For purposes of determining the CDSC, surrenders will be deemed to be

taken first from any applicable Free Withdrawal amount, then from purchase payments on a first-in, first-out basis, and finally from Contract earnings in excess of any 10% Free Withdrawal. The CDSC cannot be increased during the life of the Contracts and may be waived under certain circumstances.

Travelers does not expect that revenues from the CDSC will be sufficient to cover sales and distribution expenses incurred in connection with the Contracts. In that event, the excess distribution costs would have to be paid out of Travelers' general assets, which may include profits, if any, from the mortality and expense risk charges assessed under the Contracts. In some cases, where Travelers may expect to incur lower sales and administrative expenses or perform fewer services, it may, in its discretion, reduce or eliminate certain administrative and CDSC charges.

12. A charge equal to an effective annual rate of 1.25% of net asset value of the Subaccounts will be imposed to compensate Travelers for bearing certain mortality and expense risks. Of this amount, .625% is for mortality and .625% is for expense risks. This charge cannot be increased during the life of the Contracts.

13. The mortality risk arises from Travelers' contractual obligation to make Annuity Payments for the life of the annuitant under annuity options involving life contingencies, regardless of the annuitant's longevity and any improvement in life expectancy generally. Thus, Travelers assumes the risk that the annuitants, as a class, may live longer than has been estimated by its actuaries, so that payments guaranteed for the life of the Contracts will continue for longer than had been anticipated.

14. Travelers assumes additional mortality and certain expense risks under the Contracts by its contractual obligation to pay the death benefit in a lump sum (or in the form of an annuity option) upon the death of the annuitant before annuity or income payments commence. Also, no CDSC will be assessed if the Contract Value is paid as a death benefit. Travelers also assumes an expense risk under the Contracts because the administrative charges may be insufficient to cover actual administrative expenses.

15. In the event that the administrative charge and the mortality and expense risk charge are more than sufficient to cover Travelers' costs and expenses, any excess will be a profit to Travelers. While Travelers does not expect to profit from the administrative charges, it does expect a profit from the mortality and expense risk charge. Any profit realized from this charge would be available for any proper corporate purpose, including the payment of distribution expenses for the Contracts not reimbursed by the CDSC.

Applicants Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of: (a) Fund VA in connection with the offering of Current Contracts; (b) Fund VA in connection with the offering of Future Contracts; and (c) any Other Accounts established in the future by Travelers in connection with the offering of Future Contracts. Applicants believe that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants represent that the terms of the relief requested with respect to any Future Contracts funded by Fund VA or the Other Accounts are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants represent that the Future Contracts will be substantially identical in all material respects to the Current Contracts. Applicants state that without the requested relief, Travelers would have to request and obtain exemptive relief for Fund VA, or each new Other Account, to fund Future Contracts. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application. Further, if Travelers were to repeatedly seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit and could be disadvantaged by increased overhead of Travelers. Applicants argue that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for Travelers to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Applicants believe that both the delay and the expense of repeatedly seeking exemptive relief would impair Travelers' ability to effectively take advantage of business opportunities as they arise.

3. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

5. Applicants represent that the 1.25% mortality and expense risk charge is reasonable in relation to the risks assumed by Travelers under the Contracts and is within the range of industry practice for comparable annuity contracts. This representation is based upon Traveler's analysis of publicly available information about similar industry products, taking into consideration such factors as guaranteed minimum death benefits, minimum initial and subsequent purchase payments, other contract charges, the manner in which charges are imposed, market sector, investment options, and availability of the contract for use in qualified and non-qualified plans. Travelers represents that it will maintain at its principal office, available to the Commission, memoranda setting forth in detail the variable annuity products analyzed in the course of, and the methodology used in, and the results of, its comparative review.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. Travelers has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and investors in the Contracts. The basis for that conclusion is set forth in a memorandum which will be maintained by Travelers at its principal office and will be available to the Commission.

7. Travelers also represents that the Separate Accounts will invest only in underlying mutual funds which have

undertaken, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons" of the such fund within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants submit that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27448 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Portland District Advisory Council; Public Meeting

The U.S. Small Business Administration Portland District Advisory Council will hold a public meeting on Thursday, December 8, 1994 from 1. p.m. to 4:30 p.m. and Friday, December 9, 1994 from 8 a.m. to 12 noon at the Surf Sand Motel, Gower & Rock Court Street, Cannon Beach, Oregon to discuss such matter as may be presented by members, staff of the U.S. Administration, or others present.

For further information, write or call Ms. John L. Gilman, District Director, U.S. Small Business Administration, 222 SW., Columbia, Suite 500, Portland, OR 97201–6695, (503) 326–5221.

Dated: October 31, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–27466 Filed 11–4–94; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000145]

Pioneer Ventures Limited Partnership II; Notice of Filing of an Application for a License to Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Pioneer Ventures Limited Partnership II, 60 State Street, Boston, MA 02109, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder.

The initial investors and their percent of ownership of the Applicant are as follows:

Name	Percentage of ownership
General Partner:	
Pioneer Ventures Management, L.P. 60 State Street, Boston, MA 02109	1.0
Limited Partners:	
City of Cambridge Contributory Retirement System, 795 Massachusetts Avenue, Cambridge, MA 02139...	14.1
MBTA Retirement Fund, 99 Summer St., Suite 1700, Boston, MA 02110...	17.7
Middlesex County Contributory Retirement System, New Superior Courthouse, East Cambridge, MA 02141...	14.1
The Pioneer Group, Inc., 60 State Street, Boston, MA 02109...	21.2
Worcester County Contributory Retirement System, Courthouse Room 3, 2 Main Street, Worcester, MA 01608...	14.1
Limited Partners owning less than 10% each...	17.8
	100.0

Pioneer Ventures Limited Partnership II will be managed by Pioneer Capital Corporation. The principal shareholder and officers of Pioneer Capital Corporation who will be responsible for management of the Applicant are:

Name	Relationship to manager	Percentage ownership of manager
Frank M. Polestra.	President	0.0
Christopher W. Dick.	Vice President	0.0
Chrisopher W. Lynch.	Vice President	0.0
Leigh M. Michl	Assistant V.P.	0.0
The Pioneer Group, Inc.	Shareholder	100.0

The applicant will begin operations with committed capital of approximately $14.1 million and will be a source of debt and equity financings for qualified small business concerns. The applicant will invest primarily in technology, industrial products, and consumer businesses located in the New England States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Boston, MA.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: October 27, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–27534 Filed 11–4–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2111]

Waiver of Missile Technology Proliferation Sanctions on Foreign Persons

AGENCY: Department of State.

ACTION: Determination of notice.

On November 1, 1994, the Under Secretary of State for Arms Control and International Security Affairs executed the following determination:

On August 24, 1993, I determined that the Chinese Ministry of Aerospace Industry, to include China Precision Machinery Import/Export Corporation (CPMIEC), had engaged in missile technology proliferation activities that required the imposition of the sanctions described in Section 73(a)(2)(A) of the Arms Export Control Act (22 U.S.C. 279b(a)(2)(A)) and Section 11B(b)(1)(B)(i) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(i)). Accordingly, the required sanctions were imposed.

Pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 22797b(e)) and section 11B(b)(5) of the Export Administration Act of 1979 (50 U.S.C. app. 2401b(b)(5)), I hereby determine

that it is essential to the national security of the United States to waive these sanctions with respect to the foreign person named above.

This waiver shall take effect immediately, 20 working days having elapsed since my intention to waive these sanctions was notified to the Congress. The waiver shall remain in effect unless revoked.

Signed:

Lynn E. Davis,

Under Secretary for Arms Control and International Security Affairs.

SUPPLEMENTARY INFORMATION: This waiver also applies to the divisions, subunits, and any successor entities of the Chinese Ministry of Aerospace Industry, to include China Precision Machinery Import/Export Corporation (CPMIEC). Such additional entities include, but are not limited to: China National Space Administration, China Aerospace Corporation, China Precision Machinery Import-Export Corporation, China Great Wall Industrial Corporation or Group, Chinese Academy of Space Technology, Beijing Wan Yuan Industry Corporation (a/k/a Wanyuan Company or China Academy of Launch Vehicle Technology), China Haiying Company, Shanghai Astronautics Industry Bureau, and China Chang Feng Group (a/k/a China Changfeng Company).

As a result of this waiver, the U.S. government will no longer be required to deny licenses for exports to the entities described above or to activities of the Chinese government relating to missile development or production or affecting the development or production of electronics, space systems, or equipment, and military aircraft of Missile Technology Control Regime (MTCR) Annex equipment or technology. In addition, U.S. government contracts related to MTCR Annex items no longer are prohibited with these entities.

The waiver takes effect as of November 1, 1994, and shall remain in effect unless revoked.

The waiver does not apply to the Pakistani Ministry of Defense (and its divisions, subunits or successors), which also was sanctioned on August 24, 1993. Those sanctions remain in place. (See Public Notice 11857, **Federal Register** Vol. 58, No. 165, 9/27/93.)

Dated: November 1, 1994.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 94-27470 Filed 11-4-94; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 49844]

RIN 2105-AC19

Statement of United States International Air Transportation Policy

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Request for comments on U.S. international air transportation policy statement.

SUMMARY: This notice sets forth a statement of U.S. international air transportation policy. This notice is being published to provide interested persons an opportunity to comment on the statement.

DATES: Comments must be received no later than December 16, 1994.

ADDRESSES: Comments should be sent to the Docket Clerk, Docket 49844, Department of Transportation, 400 7th Street, S.W., Room 4107, Washington, DC 20590. To facilitate consideration of the comments, we ask commenters to file twelve copies of each comment. We encourage commenters who wish to do so also to submit comments to the Department through the Internet; our Internet address is dot__dockets@postmaster.dot.gov.[1] Note, however, that at this time the Department considers only the paper copies filed with the Docket Clerk to be the official comments. Comments will be available for inspection at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday. Commenters who wish the Department to acknowledge the receipt of their comments should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: William Boyd, Office of International Aviation, Office of the Assistant Secretary for Aviation and International Affairs, U.S. Department of Transportation, 400 7th Street SW, Room 6412, Washington, DC 20590, (202) 366-4870; or Patricia N. Snyder, Office of International Law, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW, Room 10105, Washington, DC 20590. (202) 366-9179.

SUPPLEMENTARY INFORMATION: This statement of U.S. international air transportation policy, which was developed by the Department of Transportation in consultation with the Department of State and other executive agencies, sets forth objectives and guidelines for use by U.S. Government officials in carrying out U.S. international air transportation policy. Before this statement is finalized, we will carefully consider any comments that are received.

United States International Air Transportation Policy

Introduction

The availability of efficient international air transportation will greatly enhance the future expansion of international commerce and the development of the emerging global marketplace. Worldwide, travelers and shippers are demanding more and better quality service to more places. U.S. and foreign airlines are responding to this demand by expanding traditional forms of service and by developing new and innovative services. Increased demand and the variety of carrier responses to it challenge the existing intergovernmental system's ability to ensure the development of a competitive air transportation system that meets the needs of the rapidly evolving, expanding and increasingly integrated international aviation marketplace. In many cases, existing bilateral agreements impede the growth of the marketplace.

We must address the challenges presented by these rapid changes to meet our future air transportation needs, and to provide our aviation industry with the environment and the opportunities that will enable it to grow and compete effectively in the world market. This policy statement outlines our approach to addressing those challenges.

Our Goal: Safe, Affordable, Convenient and Efficient Air Service for Consumers

As established in our last aviation policy statement in 1978, our overall goal continues to be to foster safe, affordable, convenient and efficient air service for consumers. We continue to believe that the best way to achieve this goal is to rely on the marketplace and unrestricted, fair competition to determine the variety, quality, and price of air service. We believe that this approach will provide consumers and shippers with more and better service options at costs that reflect economically efficient operations and work best to:

- Expand the international aviation market;
- Increase airlines' opportunities to expand their operations;

[1] Our X.400 e-mail address is S=dotdockets/OU1=qmail/O=hq/p=gov+dot/a=attmail/c=us.

- Increase productivity and high-quality job opportunities within the aviation industry; and
- Promote aerospace exports and general economic growth.

Changing Environment

Growing economic interdependence among nations—the "globalization" of the world economy—has expanded demand for convenient, reliable and affordable international air service. Demand for international service is growing faster than demand for U.S. domestic service, and most major U.S. airlines are now providing and planning to expand international operations. Between 1983 and 1993, the international component of U.S. airlines' route networks, measured in revenue passenger miles (RPMs), grew from around 16% to over 27%. U.S. airline revenues from international air service nearly tripled from $6.3 billion to $17.6 billion. Moreover, forecasts indicate that U.S. carrier international traffic, measured by RPMs, will increase to almost one-third of their total system traffic by the year 2000.

Just as important, the pattern of demand for international service has changed considerably. First, the regional distribution of U.S. carriers' international revenues has changed dramatically, as the primary focus of carriers' expansion moved beyond Europe to meet new demand in the emerging markets of Asia, the Pacific Rim and Latin America. In 1983, the Atlantic accounted for 48% of our carriers' international revenues, while the Pacific accounted for 32%. By 1993, the Pacific had grown to 46% while the Atlantic was only 37%. The fastest growing sectors of the international aviation market are new and relatively undeveloped markets. During this same period, revenues in the Pacific grew 286%, in Latin America 151% and in Europe 116%. Second, from 1983 to 1993, the number of international aviation city-pair markets in which U.S. airlines participate has grown by more than a third, reflecting the major expansion of air service and carrier networks throughout the world and the increased dispersion of demand. Many of these city-pair markets are relatively small, generating only a few passengers per day.

Towards a Globalized Aviation Industry

The rapid growth of demand for international air service and the wider dispersion of traffic in city-pair markets are primary factors influencing the development of the air service industry. Carriers are increasingly finding that they cannot remain profitable unless they can respond to this changed demand. To compete effectively, carriers today must have unrestricted access to as many markets and passengers as possible.

To meet demand and to improve their efficiency, many carriers are developing international hub-and-spoke systems that permit them to combine traffic flows from many routes (the "spokes") at a central point (the "hub") and transport them to another point either directly or through a hub in another region. Just as U.S. carriers developed hub-and-spoke systems to tap the broad traffic pool in the domestic market and to provide the most cost-efficient service for hundreds of communities that could not support direct service, international air carriers are developing world-wide hub-and-spoke systems to tap the substantial pool of international city-pairs. Internationally, an even larger portion of traffic moving over hub-and-spoke systems will require the use of at least two hubs (*e.g.*, a hub in both the U.S. and Europe for a passenger moving from an interior U.S. point to a point beyond the European hub). This increases the complexity and interdependence of the components of the system (both the spokes and hubs) and the importance of multinational traffic rights to the success of the system.

As a result, carriers wishing to establish global networks require a higher quality and quantity of supporting route authority than they have sought in the past. Airlines will become increasingly concerned with every market that enables them to flow passengers over any part of their system network. These airlines will be looking for broad, flexible authority to operate beyond and behind hub points, in addition to the hub-to-hub market between two countries. At present, governments operating in a bilateral context naturally focus on opportunities for their respective carriers to serve the local market between their two countries. In a bilateral context, services destined for or coming from third countries receive less consideration. In the future, governments will have to adjust their focus to bargain for the bundles of rights that will permit airlines to develop global networks.

Carriers can either serve markets themselves (direct service) or provide service through commercial arrangements with other carriers (indirect service), whether on a traditional interline connecting basis or under a closer commercial agreement between the carriers, such as code sharing. Carriers will develop service products—single-plane, on-line connecting, interline connecting, joint service—that respond to the preferences of the traveling public as measured by passenger willingness to pay for differences in the quality of service and that take into account their cost structure and market strategy. To the greatest extent possible, airlines should be free to set prices and offer various service products in response to passenger preferences.

Significant challenges face carriers wishing to develop international networks using their own direct services. They need:

- Substantial access not only to key hub cities overseas, but also through and beyond them to numerous other cities, mostly in third countries. This type of access is not readily obtainable in today's bilateral system of negotiating air rights, since governments can only exchange access rights to their own countries and cannot, between themselves, deliver access to third countries, thus requiring piecemeal negotiating efforts to build the necessary package of rights;
- Access to a large number of gates and takeoff/landing slots, frequently at some of the world's most congested airports. It may become increasingly difficult for carriers to gain effective, direct access to certain airport facilities, including some in the United States;
- Considerable financial resources to establish and sustain commercially successful overseas hub systems; and
- The ability to obtain infrastructure and establish market presence in a new region quickly. Existing foreign investment laws can effectively preclude airlines from entering new markets in one of the most efficient means available: merger or acquisition.

Some carriers are taking on these challenges directly and are striving to develop their own global systems of direct service. Other carriers have chosen to side-step the obstacles, turning instead to a new network-building technique: cross-border marketing alliances that link traffic flows between established hub-and-spoke systems in key cities of the Western Hemisphere, Europe and Asia. Some of these alliances involve cross ownership, while others do not. Under this strategy, the linking of hubs requires indirect market access through code-sharing or other cooperative marketing arrangements. Although code sharing has become a widely-used marketing device for airlines and is currently the most prevalent form of commercial arrangement, further evolution of the industry and its regulatory environment may lead to new

marketing practices that could supplement or supplant code sharing.

Code sharing and other cooperative marketing arrangements can provide a cost-efficient way for carriers to enter new markets, expand their systems and obtain additional flow traffic to support their other operations by using existing facilities and scheduled operations. Because these cooperative arrangements can give the airline partners new or additional access to more markets, the partners will gain traffic, some stimulated by the new service, and some diverted from incumbents. In this way, cooperative arrangements can enhance the competitive positions of both partners in such a relationship.

Increased international code-sharing and other cooperative arrangements can benefit consumers by increasing international service options and enhancing competition between carriers, particularly for traffic to or from cities behind major gateways. By stimulating traffic, the increased competition and service options should expand the overall international market and increase overall opportunities for the aviation industry. U.S. airlines should be major beneficiaries of this expansion and the concomitant increased service opportunities, given their competitive advantages.

Moreover, code sharing should also enhance domestic competition. Many international passengers traveling to or from U.S. interior cities use domestic services for some portion of their international journey. Code sharing should increase competition among domestic carriers to carry those passengers on the domestic segment of their international journey.

Although we expect the expansion of cooperative arrangements to be largely beneficial, there may be some negative effects. The greater traffic access of participants may give them considerable competitive muscle, and we may need to watch for harmful effects on competition.

Global systems and the growing use of code sharing may put significant competitive pressure on carriers whose strategy does not include participation in such systems or in code-sharing alliances, or whose options to participate may be limited due to the lack of potential partners. Such carriers will have to develop other commercial responses to compete effectively. We expect these pressures and responses to lead to a restructuring of service and airlines, similar to the U.S. domestic experience in the 1980s. Overall, cities and consumers will probably enjoy improved service and access to the international transportation system, although some cities may have fewer or less convenient service options in some markets than they have today. Similarly, although some airlines will grow and prosper, others will not. Overall, this evolution should expand the level and quality of international air service for consumers.

Code-sharing arrangements are designed to address the preference of passengers and shippers for on-line service from beginning to end through coordinated scheduling, baggage- and cargo-handling, and other elements of single-carrier service. However, innovative service products, such as code sharing, can only respond to consumer preferences accurately, and thereby enable the marketplace to function efficiently, if consumers make choices based on full information.

Therefore, we must ensure that airlines give consumers clear information about the characteristics of their service product, and that consumers can distinguish between code sharing and other forms of service.

In addition to the two types of global networks (sole-carrier systems and joint carrier systems), there will continue to be a role for air services outside of global networks. The U.S. experience with deregulation indicates that—absent legal barriers to entry—specialized competitors will enter the market and discipline the pricing and service behavior of the larger network operators. The introduction of technologically advanced aircraft such as the B–767, the MD–11 and the B–777 make direct service on longer or thinner routes economically viable. Moreover, airlines can viably serve heavily traveled routes with point-to-point service.

In short, as indicated by our domestic experience, a variety of service forms—global networks with carriers participating either as the sole provider or as participant in a joint network, and regional niche carriers—can exist in the international aviation market and the competition among these services will enhance consumer benefits through efficient operations and low fares. Thus, our international aviation strategy should provide opportunities for all of these forms of service so that we realize the benefits from maximum competition among them.

Our airlines are well positioned to be primary participants in all aspects of the future global marketplace. In recent years, our largest domestic carriers have become our primary international carriers, replacing specialized international operators. After operating in a deregulated domestic market for more than 15 years, our carriers have developed operating efficiencies that give them a cost advantage over their major foreign competitors. Moreover, the financial positions of our carriers are improving due to their cost-cutting measures and improving economic conditions. Coupled with their cost efficiencies, their improving financial status will further enhance their competitive capabilities. Over time, however, trends toward privatization and increased productivity of major foreign competitors may affect the current cost advantage U.S. airlines enjoy. We must try to provide our carriers with the flexible rights and economic environment that will enable them to respond to the dynamics of the marketplace.

Intergovernment Aviation Relations

International air services between two nations have traditionally been conducted pursuant to bilateral agreements. The U.S. National Commission To Ensure a Strong Competitive Airline Industry and the European Union's Comité des Sages for Air Transport have both recognized that the bilateral system is limited in its ability to encompass the broad, multinational market access required by the new global operating systems. Consequently, progress in developing global networks has been and will be extremely fragmented and may preclude or limit the development of efficient operations. We must consider alternative forums for international aviation negotiations and agreements in which we can obtain the necessary broad access rights. We should examine the feasibility of achieving multilateral air service agreements among trading partners. Although such negotiations may be more complex and difficult because of the number of parties involved, they should be undertaken when they present a reasonable prospect for further liberalization.

Moreover, some governments are taking steps to enhance their airlines' position both by restricting the development of new, competitive services and by trying to overcome, through government fiat, their carriers' cost disadvantages that make it difficult for them to compete against U.S. airlines in a free market. These efforts underlie many of the disputes we face in international negotiations today.

Such countries are responding to the highly competitive integrated and global air transportation market, in which their airlines may not be fully prepared to compete. Most foreign airlines are only beginning to adapt to the more competitive operating environment through such mechanisms as streamlining costs and realigning their

operations to achieve greater productivity and operating economies. For state-owned airlines, privatization is an important initial step as it will lead those airlines to develop cost-efficient operations and, in the longer term, to expand their markets. These governments also may be reacting to the U.S. airlines' recent operating successes in the international aviation market, which are largely attributable to the U.S. airlines' productivity and competitive gains.

Some national governments continue to give their national airlines financial aid. Some also distort the marketplace by permitting their national airlines to maintain ground-handling and other monopolies, by denying airlines access to necessary airport facilities, or by allowing user fees that equalize cost differentials between carriers. These actions distort competition and deprive the aviation system and consumers of the benefits that greater cost efficiency and lower prices would encourage. In the long run, these efforts will work against the overall best interest of the world economy. Moreover, they will be unsuccessful in providing long-term protection against the developing global aviation systems because no individual government can control all facets of its airlines' marketplace.

U.S. Objectives

We have outlined above our expectations about the future of the world air transportation industry and the role of U.S. airlines. We expect that international operations will depend more on traffic flows from multiple countries. In light of our goals, recent developments in the market and industry, and the positions and actions of our trading partners, we have designed our international aviation strategy to meet the following objectives:

- Increase the variety of price and service options available to consumers.
- Enhance the access of U.S. cities to the international air transportation system.
- Provide carriers with unrestricted opportunities to develop types of service and systems based on their assessment of marketplace demand:

—These opportunities should include unrestricted rights for airlines to operate between international gateways by way of any point and beyond to any point, at the discretion of airline management. Carriers should be able to pursue both direct service using their own equipment and indirect service through commercial relationships with other carriers;

—Service opportunities should not be restricted in any manner, such as restrictions on frequencies, capacity or equipment, so that carriers may provide levels of service commensurate to market demand;

—Carriers' ability to set prices should also be unrestricted to create maximum incentives for cost efficiencies and to provide consumers with the benefits of price competition and lower fares;

—These opportunities should apply not only to scheduled services, but also to cargo and charter opportunities, because of their growing importance to the world's economy.

- Ensure that competition is fair and the playing field is level by eliminating marketplace distortions, such as government subsidies, restrictions on carriers' ability to conduct their own operations and ground-handling, and unequal access to infrastructure, facilities, or marketing channels.
- Encourage the development of the most cost-effective and productive air transportation industry that will be best equipped to compete in the global aviation marketplace at all levels and with all types of service:

—Infrastructure needs should be addressed and unnecessary regulatory barriers eliminated.

—Privately held airlines have better incentives to reduce costs and respond to public demand. Therefore, as we have in the past, we will be supportive of governments wishing to privatize their airlines so that their privatization efforts will be successful; and

—Reduce barriers to the creation of global aviation systems such as limitations on cross-border investments wherever possible.

Plan of Action

We recognize that considerable time and effort will be required to achieve an open aviation regime worldwide. We can get there by making a concerted effort to eliminate the obstacles to that regime and by taking a more strategic and long-term approach to our overall international aviation policies. At a minimum, we must increase our focus on emerging markets and their contribution to global networks; build a coalition of like-minded trading partners committed to the principles of free trade in aviation services; work closely with our trading partners to address their concerns; develop new incentives for encouraging market reform, such as increased opportunities for cross-border investment in airlines; and devise alternatives to the bilateral aviation system for achieving our objectives. We are launching our new initiatives to create freer trade in aviation services by taking the following steps:

- Extend invitations to enter into open aviation agreements to a group of countries that share our liberalization vision and offer important flow traffic potential for our carriers even though they may have limited Third and Fourth Freedom traffic potential. This would assist the development of global systems and increase the momentum for further worldwide liberalization.
- Give priority to building aviation relationships between the United States and potential growth areas in Asia, South America and Central Europe. This recognizes the importance of these trading partners and the need to provide air transportation to support those developing trade markets. It will also make available new markets to build global networks.
- Renew efforts to achieve liberal agreements with trading partners with which our aviation relationships lag behind those of our general trade advancements, such as Canada and the United Kingdom.
- Emphasize the importance of economic analysis in developing policies and strategies for achieving our overall aviation goals. This will enable us to remain focused on the overall strategic objectives, understand developments in the industry and market, and plan for the future.
- Seek changes in U.S. airline foreign investment law, if necessary, to enable us to obtain our trading partners' agreements to liberal arrangements.
- Increase our efforts to reach out to Congress and constituent groups, such as consumers, multinational corporations (aircraft manufacturers, telecommunications, travel and hotel industries), cities, airlines, labor and travel agents to learn their anticipated needs over a 3–5 year period. This will provide us with valuable information for developing our positions, as well as enlisting their support in pushing for greater liberalization.
- Establish stronger connections with U.S. government agencies whose functions are to promote U.S. business and trade interests (*e.g.*, Department of Commerce and the Export/Import Bank) to ensure that we share a single vision of the future global marketplace.

Given the diverse positions of our trading partners and their varying degrees of willingness to liberalize aviation relations, we must also have a strategy for dealing with countries that are not prepared or willing to join us in moving quickly to an unrestricted air

service regime. Our approach is a practical one: it proposes to advance the liberalization of air service regimes as far as our partners are willing to go, and to withhold benefits from those countries that are not willing to move forward. Specifically, we will pursue the following strategy:

1. We will offer liberal agreements to a country or group of countries if it can be justified economically or strategically. We will view economic value more broadly than we have in the past, in terms of both direct and indirect access and in terms of potential future development. Moreover, there may be strategic value in adopting liberal agreements with smaller countries where doing so puts competitive pressure on neighboring countries to follow suit.

2. We recognize that some countries believe that they can resist the trend of economic forces and continue to control access to their markets tightly. We believe that they cannot, and that attempts to do so will ultimately fail. Nevertheless, we will work with these countries to develop alternatives that address their immediate concerns where this will advance our international aviation policy objectives. We will examine alternative approaches that may include departing from established methods of negotiation (perhaps negotiations with two or more trading partners); try to develop service opportunities for the foreign airline to make service to the U.S. more economically advantageous for it; and continue our efforts to help those governments and their constituencies appreciate the benefits that unrestricted air services can bring to their economies and industries.

While we work with such countries, we can consider, in the interim, transitional or sectoral agreements.

Transitional agreements—Under this approach, we would agree to a specified phased removal of restrictions and liberalization of the air service market. This approach contemplates that both sides would agree, from the beginning, to a completely liberalized air service regime at the end of a certain period of time.

Sectoral agreements—Traditionally, aviation agreements have covered all elements of air transportation between two countries. However, as a first step, we can consider agreements that eliminate restrictions only on services in specific aviation sectors, such as air cargo or charter services.

3. For countries that are not willing to advance liberalization of the market, we will maintain maximum leverage to achieve our procompetitive objectives. We can limit their airlines' access to the U.S. market and restrict commercial relations with U.S. airlines. When airlines request authority to serve restricted bilateral markets that is not provided for under an international agreement, we will consider their requests on a case-by-case basis in light of all our policy objectives, including, *inter alia*:

- Whether approval will increase the variety of pricing and service options available to consumers;
- Whether approval will improve the access of cities, shippers and travelers to the international air transportation system;
- The effect of the proposed transaction on the U.S. airline industry and its employees. In this regard, we will ascribe greater value to code-sharing arrangements where U.S. airlines provide the long-haul operations. We will also recognize the greater economic value of such arrangements where the services connect one hub to another; and
- Whether the transaction will advance our goals of eliminating operating and market restrictions and achieving liberalization.

If aviation partners fail to observe existing U.S. bilateral rights, or discriminate against U.S. airlines, we will act vigorously, through all appropriate means, to defend our rights and protect our airlines.

Conclusion

We are living through a period in which international aviation rules must change. Privatization, competition, and globalization are trends fueled by economic and political forces that will ultimately prevail. Governments and airlines that embrace these trends will far outpace those that do not. The U.S. government will be among those that embrace the future.

(Authority Citation: 49 U.S.C. 40101, 40113, 41102, 41302, and 41310.)

Dated: October 31, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs, Department of Transportation.

[FR Doc. 94–27450 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: The FAA is issuing this notice to advise the public that the November 8, 1994, meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation and business airplane issues (59 FR 53509) has been canceled.

FOR FURTHER INFORMATION CONTACT: Ms. Carolina E. Forrester, Office of Rulemaking (ARM–206). Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591, telephone (202) 267–9690.

Issued in Washington, DC, on November 1, 1994.

Chris A. Christie,

Director, Office of Rulemaking.

[FR Doc. 94–27524 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Bethel, AK; Notice of Change in Facility Operation

Notice is hereby given that on or about November 5, 1994, the Flight Service Station at Bethel, Alaska, will be closed. Services to the general aviation public formerly provided by this facility will be provided by the Automated Flight Service Station at Kenai, Alaska. This information will be reflected in the FAA Organization Statement the next time it is reissued. Section 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Anchorage, Alaska, on October 18, 1994.

Jacqueline L. Smith,

Regional Administrator, Alaskan Region.

[FR Doc. 94–27525 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 1, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to meet print and distribution dates the Department of the Treasury, on behalf of the Internal Revenue Service, is requesting Office of Management and Budget (OMB) review and approval of the form described below by December 2, 1994. All comments must be received by close of business November 28, 1994.

Internal Revenue Service (IRS)

OMB Number: 1545–1288
Form Number: IRS Form 8828
Type of Review: Revision
Title: Recapture of Federal Mortgage Subsidy
Description: Form 8828 is needed to compute the section 143(m) tax on recapture of the Federal subsidy from use of qualified mortgage bonds and mortgage credit certificates in cases where the financing is provided after 1990 and the home subject to the financing is sold during the first 9 years after financing was provided. IRS uses the information to determine that the proper amount of Federal subsidy is recaptured.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 1,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—26 minutes
Learning about the law or the form—23 minutes
Preparing the form—1 hour, 20 minutes
Copying, assembling and sending the form to the IRS—20 minutes
Frequency of Response: Other (for year of sale of home)
Estimated Total Reporting/ Recordkeeping Burden: 1,882 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 94–27536 Filed 11–4–94; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

October 26, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0118
Form Number: ATF F 2148 (5200.17)
Type of Review: Extension
Title: Bond-Drawback of Tax on Tobacco Products, Cigarette Papers or Tubes
Description: The bond is necessary to secure payment for tobacco articles on which a drawback (refund on tariff or other tax) has been claimed and paid. The bond will secure payment in the event that a claim was not lawfully refunded. The bond describes the particular conditions under which the surety company and drawback claimant adhere to a description of what the bond covers.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 50
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 50 hours

OMB Number: 1512–0333
Form Number: ATF REC 5130/1
Type of Review: Extension
Title: Usual and Customary Business Records Maintained by Brewers
Description: ATF audits brewers' records to verify production of beer and cereal beverage and to verify the quantity of beer removed subject to tax and removed without payment of tax.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Recordkeepers: 535
Estimated Burden Hours Per Recordkeeper: 1 hour
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 1 hour

OMB Number: 1512–0390
Form Number: ATF F 5020.29
Type of Review: Extension
Title: Request for Disposition of Offense
Description: The information provided on this form determines whether an applicant is eligible to receive a Federal license or permit. If an applicant applies for a license or permit and has an arrest record charged with a violation of Federal or State law and there is no record present of the disposition of the case(s), the form is sent to the custodian or records to ascertain the disposition of the case.
Respondents: State or local governments
Estimated Number of Respondents: 3,000
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,500 hours

OMB Number: 1512–0478
Form Number: ATF REC 5130/3 and ATF REC 5130/4
Type of Review: Extension
Title: Marks on Equipment and Structures (5130/3), Marks and Labels on Containers of Beer (5130/4)
Description: Marks, signs, and calibrations are necessary on equipment and structures for identifying major equipment, for accurate determination of tank contents, and segregation of taxpaid and nontaxpaid beer. Marks and labels on containers of beer are necessary to inform consumers of containers contents, and to identify the brewer and place of production.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Recordkeepers: 535
Estimated Burden Hours Per Recordkeeper: 1 hour
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 1 hour
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 94–27537 Filed 11–4–94; 8:45 am]
BILLING CODE 4810–31–P

Customs Service

[T.D. 94–85]

License Cancellation

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General Notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following Customs broker license has been cancelled due to the death of the broker. This license was issued in the Los Angeles District.

Delores C. Hand—license no. 6320

Dated: November 1, 1994.

Philip Metzger,

Director, Office of Trade Operations.

[FR Doc. 94–27426 Filed 11–4–94; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 214
Monday, November 7, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, November 18, 1994 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS: Open to the Public.

Agenda

I. Approval of Agenda
II. Approval of Minutes of October Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Reports
- The Retention of Minority Students in Colorado Public Institutions of Higher Education: Fort Lewis and Adams State Colleges (Colorado)
- Race Relations in Western Nebraska (Nebraska)
- Hate Crime in Ohio (Ohio)

VI. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105 (TDD 202–376–8116 at least five (5) days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: November 3, 1994.

Emma Monroig,

Solicitor.

[FR Doc. 94–27631 Filed 11–3–94 1:03 pm]

BILLING CODE 6335–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Thursday, November 10, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Final Rule: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.
3. Appeal of Denial of Field of Membership Expansion Request by Steel Works Community Federal Credit Union, Weirton, West Virginia.
4. Final Rule: Amendments to Part 707, NCUA's Rules and Regulations, Truth in Savings, and Addition of Appendix C to Part 707, Official Staff Interpretations.
5. Proposed Interpretative Ruling and Policy Statement on the Establishment of a Supervisory Review Committee.
6. Central Liquidity Facility Bylaws.
7. Central Liquidity Facility Investment Policy.
8. Overhead Transfer Rate Fiscal Year 1995, 1996 and 1997.
9. Fiscal Year 1995 Operating Fee Scale.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–27696 Filed 11–3–94; 3:49 pm]

BILLING CODE 7535–01–M

Corrections

Federal Register
Vol. 59, No. 214
Monday, November 7, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 940816-4216]
RIN 0693-AA70

Approval of Federal Information Processing Standards Publication 189, Portable Operating System Interface (Posix); Part 2: Shell and Utilities

Correction

In notice document 94-25049 beginning on page 51415 in the issue of Tuesday, October 11, 1994, make the following corrections:

1. On page 51416, in the 2d column, in the first full paragraph, in the 17th and 18th lines, the words "the associated" should read "compliant with the".

2. On the same page, in the third column, in the third and fourth lines, "c-1" should read "c|1".

3. On page 51417, in the first column, under the heading "Recommendations", in paragraph 2, in the second line, "interference" should read "interface".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

Correction

In rule document 94-21510 beginning on page 45588 in the issue of Thursday, September 1, 1994 make the following corrections:

§ 20.104 [Corrected]

1. On page 45592, in § 20.104, in the Atlantic Flyway table, in the ninth line, in the fifth column, "Sept. 25" should read "Sept. 15".

2. On page 45593, in the same section, in the Mississippi Flyway table, in the sixth line, in the fourth column, "Sept. 27" should read "Sept. 17".

3. On the same page, in the same section, in the same table, in the 12th line, in the 3rd column, "Oct. 25" should read "Oct. 15".

4. On the same page, in the same section, in the same table, in thelast line, in the fourth column, "Sept. 27"should read "Sept 17".

BILLING CODE 1505-01-D

federal register

Monday
November 7, 1994

Part II

Department of Education

Office of Special Education and Rehabilitative Services; Training Personnel for the Education of Individuals With Disabilities, et al.; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Secretary announces a final priority to provide a competitive preference to applications funded under the Individuals with Disabilities Education Act (IDEA) that serve communities that have been designated as Empowerment Zones or Enterprise Communities under section 1391 of the Internal Revenue Code, as amended by title XIII of the Omnibus Budget Reconciliation Act of 1993. This priority is intended to focus resources on the needs of infants, toddlers, children, and youth with disabilities and their families who live in these communities and who are often underserved. For 1995, the Secretary anticipates using this priority with competitions for Parent Training and Information Centers under the Training Personnel for the Education of Children and Youth with Disabilities program, and Outreach Projects under the Early Education for Children with Disabilities program.

EFFECTIVE DATE: This priority takes effect on December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Lee Coleman, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4615, Washington D.C. 20202–2732. Telephone: (202) 205–8166. Individuals who use a telecommunications device for deaf (TDD) may call the TDD number at (202) 205–8170.

SUPPLEMENTARY INFORMATION: On July 26, 1994, the Secretary published a notice of proposed priority for projects funded under the Individuals with Disabilities Education Act in the **Federal Register** (59 FR 38082).

The Empowerment Zone and Enterprise Community program is a critical element of the Administration's community revitalization strategy. The program is a first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

Under this program, the Federal Government will designate up to nine areas as Empowerment Zones and up to 95 areas as Enterprise Communities in accordance with Internal Revenue Code section 1391, as amended by title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). To be eligible for designation, an area must be nominated by one or more local governments and the State or States in which it is located or by a State-Chartered Economic Development Corporation. A nominated area must be one of pervasive poverty, unemployment, and general distress, and must have a poverty rate of not less than the level specified in section 1392 of the Internal Revenue Code.

In the Empowerment Zone and Enterprise Community program, communities have been invited to submit strategic plans that comprehensively address how the community would link economic development with education and training as well as how community development, public safety, human services, and environmental initiatives will together support sustainable communities. Empowerment Zones and Enterprise Communities will be designated by the Department of Agriculture and the Department of Housing and Urban Development (HUD) based on the quality of their strategic plans. Designated areas will receive Federal grant funds and substantial tax benefits and will have access to other Federal programs. (For additional information on the Empowerment Zone and Enterprise Community program, contact HUD at 1–800–998–9999.)

The Department of Education is supporting the Empowerment Zone and Enterprise Community initiative in a variety of ways. It is encouraging Empowerment Zones and Enterprise Communities to use funds they already receive from Department of Education programs (including Chapter 1 of Title I of the Elementary and Secondary Education Act, the Drug-Free Schools and Community Act, the Adult Education Act, and the Carl D. Perkins Vocational and Applied Technology Education Act) to support the comprehensive vision of their strategic plans. The Department of Education also intends to give preferences to Empowerment Zones and Enterprise Communities in a number of discretionary grant programs that are well-suited for inclusion in a comprehensive approach to economic and community development. In addition to the programs under IDEA, the Department intends to give preferences to Empowerment Zones and Enterprise Communities in the Rehabilitation Act Projects with Industry program, the Rehabilitation Act Special Demonstration Projects program, the Urban Community Service program, and a variety of discretionary programs under the Elementary and Secondary Education Act.

The discretionary programs funded under IDEA are well suited to play a role in Empowerment Zones and Enterprise Communities because of the close relationship between poverty and disabilities. While the risk factors associated with disabilities are highest in low income areas, these areas often serve the lowest numbers of children with disabilities. Under the authority of IDEA, the Department supports a wide range of programs related to providing special education, related, and early intervention services to infants, toddlers, children, and youth with disabilities and their families. Coordinated and comprehensive approaches to services, such as those under the Empowerment Zone and Enterprise Community program, can be effective tools in addressing the needs of these children.

For FY 1995, the Secretary expects to use this priority in conjunction with priorities under the following programs:

Parent Training and Information Centers (funded under IDEA Part D, Training Personnel for Education of Children and Youth with Disabilities program); and Outreach Projects (funded under IDEA Part C, Early Education for Children with Disabilities program).

Parent Training and Information Centers projects provide training and information to parents of infants, toddlers, children, and youth with disabilities, and to persons who work with parents to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children with disabilities.

Outreach projects build the capacity of educational and other agencies to adopt and implement proven models and components of models to improve services for children under the age of eight with disabilities and their families.

Note: This notice of final priority does not solicit applications. Notices inviting applications under these competitions are published in a separate notice in this issue of the **Federal Register**.

On July 26, 1994, the Secretary published a notice of proposed priority in the **Federal Register** (59 FR 38082). The comments, and the Secretary's responses to them, are discussed in appendix 1 to this notice. A listing of areas for which applications have been made for designation as Empowerment Zones and Enterprise Communities is contained in appendix 2.

Priority

Under 34 CFR 75.105(c)(2) the Secretary gives a competitive preference

to applications that are otherwise eligible for funding under appropriate discretionary programs under the Individuals with Disabilities Education Act and that meet the following priority. The Secretary will implement this priority for fiscal year 1995 and may implement it for any later fiscal year:

Propose to provide services to one or more Empowerment Zones or Enterprise Communities that are designated within the areas served by projects. To meet this priority an applicant must indicate that it will:

- Design a program that includes special activities focused on the unique needs of one or more Empowerment Zones or Enterprises Communities; or,
- Devote a substantial portion of program resources to providing services within, or meeting the needs of residents of these zones and communities.

As appropriate, the proposed project under the Individuals with Disabilities Education Act must contribute to the strategic plan of the Empowerment Zones or Enterprise Communities and be made an integral component of the Empowerment Zone or Enterprise Community activities.

Empowerment Zones and Enterprise Communities are not expected to be designated by the time proposals must be prepared for fiscal year 1995 competitions. In order to obtain a competitive preference under this priority for FY 1995, applicants must choose one of the following options. First, an applicant may indicate that it will serve a specific area or areas that have applied for designations as Empowerment Zones or Enterprise Communities within the geographic area that the applicant proposes to serve. Alternatively, the applicant may simply state that it would serve one or more Empowerment Zones or Enterprise Communities that may be designated within the geographic area that the applicant proposes to serve. In the first case, additional points will be awarded only if one or more of the areas specified in the application are designated as Empowerment Zones or Enterprise Communities. In the second case, additional points will be awarded only if one or more Empowerment Zones or Enterprise Communities are designated within the geographic area that the project proposes to serve.

Intergovernmental Review

One or more of the programs that may be affected by this priority are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Program authority: 20 U.S.C. Sections 1421 through 1462.

Dated: November 1, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

Appendix 1—Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, 14 parties submitted comments. Six of the 14 commenters generally supported the priority. The 8 remaining commenters objected to the priority for a variety of reasons. An analysis of the comments and of the changes in the proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: Six commenters expressed concern that services would be reduced for families in general that are not located in Empowerment Zones or Enterprise Communities, or that poor, isolated, and underserved populations not included in these areas would receive fewer services. Most of these commenters also did not see a relationship between the purposes of IDEA programs and the Empowerment Zones and Enterprise Communities.

Discussion: The discretionary programs funded under IDEA program are well suited to play a role in Empowerment Zones and Enterprise Communities because of the close relationship between poverty and disabilities. Because residents of low income areas are often underserved, an important goal of the IDEA discretionary programs is to improve services for this population. Providing preferences for applications serving Empowerment Zones and Enterprise Communities will assist in meeting this goal. While the risk factors associated with disabilities are highest in low income areas, these areas often serve the lowest numbers of children with disabilities. In addition, the coordinated and comprehensive approaches to services, such as those under the Empowerment Zone and Enterprise Community program, can be effective tools in addressing the needs of these children. The priority is expected to both target resources on areas of greatest need and to increase the effective use of resources.

Changes: None.

Comment: Three commenters were concerned that the competitive preference would lead to some areas not receiving any services because they would not be able to compete effectively with applicants serving Empowerment Zones or Enterprise Communities. This comment was made most often with regard to the Parent Training and Information Center (PTI) program, which is intended to ensure coverage of services throughout the States to the greatest extent possible, and from small States.

Discussion: The Secretary agrees that it is important in some programs to serve all areas of the country. Specifically, with regard to the PTI program, section 631(e)(4)(A) of IDEA and regulations at 34 CFR 316.24 place a priority on projects that ensure widespread geographic coverage.

Changes: While no change is being made in this priority, a 15-point competitive preference will be given to applications under the Parent Training and Information Centers competition that would provide parent training and information in a State that would be unserved by an existing PTI center in 1995. The Secretary believes that this additional competitive preference will help ensure that all areas of the country receive services. This competitive preference is announced in the Notice inviting applications that is published separately in this issue of the **Federal Register**.

Comment: One commenter indicated that the priority would give grant applications from Empowerment Zones and Enterprise Communities priority for funding.

Discussion: The priority would give applications proposing to serve Empowerment Zones and Enterprise Communities priority for funding, not applications from the zones and communities themselves.

Changes: None.

Comment: Two commenters proposed replacing the competitive preference with a requirement that Parent Training and Information Center applicants be required to consult and collaborate with the Empowerment Zones and Enterprise Communities on activities which would serve families of children with disabilities who are poor, unemployed or in general distress.

Discussion: Parent Training and Information Centers are already required to collaborate with other agencies that would include Empowerment Zones and Enterprise Communities.

Changes: None.

Comment: One commenter noted that designation of the Empowerment Zones and Enterprise Communities would not occur until later this year and the information would not be available for applicants in time for this competition. The commenter suggested postponing action until fiscal year 1996.

Discussion: It is important to begin links between IDEA programs and Empowerment Zones and Enterprise communities as early as possible. However, the Department agrees that much of the pertinent information will not be available to applicants at the time their applications are prepared. Depending on the timing of the Empowerment Zone and Enterprise Community designations, applicants will not know the designations for Empowerment Zones and Enterprise Communities at the time they prepare their proposals.

Changes: The priority has been revised to indicate that, in order to obtain the

competitive preference, applicants must propose to provide services to one or more Empowerment Zones or Enterprise Communities that are designated within the areas served by projects. If no zones or communities are designated within an applicant's proposed project areas, applicants would not receive the competitive preference.

Comment: Two commenters indicated a concern that the competitive preference would interfere with the ability of projects to serve children with disabilities and their families in accordance with the intent of IDEA, because of conflicts with the multiple purposes of the Empowerment Zones and Enterprise Communities that emphasize economic development.

Discussion: While the scope of the Empowerment Zone and Enterprise Community initiative is significantly broader than that of IDEA, the Secretary does not believe that there is a fundamental conflict between the purposes or operation of IDEA programs and the Empowerment Zones and Enterprise Communities. However, it is important to clarify that project activities are limited to carrying out the purpose of IDEA and do not extend to broader purposes of the Empowerment Zones and Enterprise Communities that extend beyond IDEA. Language in the priority states that projects must contribute to the strategic plan of the Empowerment Zones or Enterprise Communities and be made an integral component of the Empowerment Zone or Enterprise Community activities. This language might incorrectly be construed to require projects to participate in activities that are not consistent with IDEA, or that are inappropriate or infeasible within the context of a particular IDEA program. For example, an Outreach project under the Early Education for Children with Disabilities program that serves the entire Nation would find it infeasible to become an integral part of the activities of 104 Empowerment Zones and Enterprise Communities.

Changes: In order to clarify that projects activities related to Empowerment Zones and Enterprise Communities must be appropriate within the context of IDEA while participating in broader community empowerment strategies, the words "as appropriate" have also been added with regard to the inclusion of the projects in the planning and activities of the Empowerment Zones or Enterprise Communities.

Appendix 2—Areas for Which Applications Have Been Submitted for Designation as Empowerment Zones and Enterprise Communities

Note: Areas for which more than one application are submitted are repeated.

Urban Applications—State, Type of Application, and City/County

Alabama

Empowerment Zone
- Anniston
- Mobile/Pritchard

Enterprise Community
- Auburn
- Birmingham
- Huntsville
- Opelika

Alaska

Empowerment Zone
- Fairbanks

Arizona

Empowerment Zone
- Phoenix
- Tucson

Enterprise Community
- Avondale/Maricopa

Arkansas

Empowerment Zone
- Pine Bluff

Enterprise Community
- Fort Smith
- Pulaski County

California

Empowerment Zone
- Fresno, Fresno County
- Los Angeles City and County
- Oakland
- Sacramento
- San Diego

Enterprise Community
- Anaheim
- Bell
- East Palo Alto
- Huntington Park
- Long Beach
- Los Angeles
- Los Angeles
- National City
- Pomona
- Richmond
- Riverside
- Sacramento
- Salinas
- San Bernardino
- San Francisco/Chinatown
- San Francisco/Bayview
- San Jose
- Santa Ana
- Santa Barbara County
- Santa Cruz
- Sanislause County, Modesto
- South El Monte

Colorado

Empowerment Zone
- Denver City and County
- Greeley, Weld County

Enterprise Community
- Aurora
- Commerce City
- Pueblo

Connecticut

Empowerment Zone
- Bridgeport
- Hartford

Enterprise Community
- New Haven

Delaware

Empowerment Zone
- Wilmington, New Castle

District of Columbia

Empowerment Zone
- Washington

Florida

Empowerment Zone
- Dade County, Miami
- Fort Lauderdale, Broward County
- Jacksonville

Enterprise Community
- Brevard County
- Daytona Beach
- Gainesville
- Hillsborough County
- Hollywood
- Lee County, Fort Myers
- Manatee County
- Orange County
- Orlando
- Polk County
- Saint Petersburg
- Seminole County
- Tallahassee
- Tampa
- West Palm Beach

Georgia

Empowerment Zone
- Atlanta
- Savannah

Enterprise Community
- Albany
- Athens, Clark County
- Augusta
- Dekalb County
- Macon

Illinois

Empowerment Zone
- Chicago
- East Saint Louis
- Peoria

Enterprise Community
- Alton
- Chicago/Calumet Consortium
- Chicago/New Englewood
- Chicago/Westside
- Cook County
- Joliet
- Kankakee
- Maywood
- Rockford
- Springfield
- Waukegan

Indiana

Empowerment Zone
- Gary

Enterprise Community
- Bloomington
- Evansville
- Fort Wayne
- Indianapolis
- Muncie
- South Bend

Iowa

Empowerment Zone
- Sioux City

Enterprise Community
- Cedar Rapids
- Des Moines

Kansas

Empowerment Zone
- Kansas City (with Kansas City, Missouri)

Enterprise Community
- Topeka
- Wichita

Kentucky

Empowerment Zone
- Louisville, Jefferson County

Enterprise Community
- Lexington-Fayette

Paducah
Richmond

Louisiana

Empowerment Zone
Lake Charles
New Orleans
Ouachita
Shreveport
Enterprise Community
Baton Rouge
Lafayette Parish
New Iberia
Terrebonne

Maryland

Empowerment Zone
Baltimore
Enterprise Community
Hagerstown

Massachusetts

Empowerment Zone
Boston
Enterprise Community
Chelsea
Brockton
Cambridge
Fall River
Holyoke
Lawrence
Lowell
Lynn
New Bedford
Springfield
Worcester

Michigan

Empowerment Zone
Benton Harbor, Benton
Detroit
Flint
Enterprise Community
Detroit
Grand Rapids
Highland Park
Inkster
Jackson
Kalamazoo
Lansing
Muskegon
Pontiac
Royal Oak
Saginaw
Taylor

Minnesota

Empowerment Zone
Minneapolis
Saint Paul
Enterprise Community
Hennepin County

Mississippi

Empowerment Zone
Gulfport
Enterprise Community
Jackson

Missouri

Empowerment Zone
Kansas City (with Kansas City, Kansas)
Saint Louis, Saint Louis County, Wellston
Enterprise Community
Joplin
Kinloch
Pagedale
Saint Joseph

Nebraska

Enterprise Community
Lincoln
Omaha

Nevada

Enterprise Community
Clark County

New Hampshire

Enterprise Community
Manchester

New Jersey

Empowerment Zone
Newark
Camden (with Philadelphia, Pennsylvania)
Enterprise Community
Asbury Park
Atlantic City
East Orange
Elizabeth
New Brunswick
Plainfield
Jersey City
Passaic
Paterson
Trenton
Vineland

New Mexico

Enterprise Community
Albuquerque
Las Cruces

New York

Empowerment Zone
Buffalo
New York, Bronx County
Rochester
Syracuse
Enterprise Community
Albany
Auburn
Binghamton
Brooklyn Navy Yard
New York City/SW Brooklyn
New York City/So. Bronx
New York City/Jamaica
Kingston/Newburgh
New York City/Brooklyn
Utica
Yonkers

North Carolina

Empowerment Zone
Asheville
Enterprise Community
Charlotte
Durham
Fayetteville
Greensboro
Raleigh
Wilmington
Winston-Salem

Ohio

Empowerment Zone
Cleveland
Kent
Stuebenville (with Weirton, West Virginia)
Enterprise Community
Akron
Canton
Cincinnati
East Cleveland
Columbus
Dayton
Mansfield
Toledo
Urbancrest
Warren
Youngstown

Oklahoma

Empowerment Zone
Oklahoma City
Enterprise Community
Oklahoma City
Tulsa

Oregon

Empowerment Zone
Portland
Enterprise Community
Eugene

Pennsylvania

Empowerment Zone
Chester
Philadelphia (with Camden, New Jersey)
Pittsburgh, Allegheny County
Enterprise Community
Altoona
Beaver Falls
Erie
Harrisburg
Johnstown
Lancaster
Philadelphia
Philadelphia
Philadelphia/NC
Philadelphia/SC
Reading
Scranton
Sharon/Farrell
Washington County
York

Rhode Island

Enterprise Community
Providence
Pawtucket/Central Falls

South Carolina

Enterprise Community
Charleston
North Charleston
Columbia
Florence
Greenville
Spartanburg
Sumter

Tennessee

Empowerment Zone
Knoxville
Memphis
Enterprise Community
Chattanooga
Jackson
Nashville

Texas

Empowerment Zone
Austin
Dallas
El Paso
Fort Worth, Lake Worth
Houston
Longview, Gregg County
Orange
Port Arthur
San Antonio
Waco
Enterprise Community
Beaumont

Brownsville
Corpus Christi
Denton
Harlingen
Galena Park
Laredo
Lubbock
Galveston
Garland
Temple
Texarkana

Utah

Enterprise Community
Ogden
Salt Lake City

Virginia

Empowerment Zone
Hampton
Norfolk
Richmond
Enterprise Community
Danville
Lynchburg
Portsmouth
Roanoke
Suffolk

Vermont

Enterprise Community
Burlington

Washington

Empowerment Zone
Tacoma
Enterprise Community
Pierce County
Seattle
Spokane
Yakima

West Virginia

Empowerment Zone
Charleston
Weirton (with Stuebenville, Ohio)
Enterprise Community
Huntington
Parkersburg
Wheeling

Wisconsin

Empowerment Zone
Milwaukee
Enterprise Community
Beloit
Kenosha
La Crosse
Madison
Racine

Rural Applications—State, Type of application, and City/County

Alabama

Empowerment Zone
Butler, Lowndes
Bullock
Wilcox
Hale
Macon
Enterprise Community
Tuscaloosa
Bibb
Chambers
Perry
Greene, Sumter

Alaska

Empowerment Zone
Nome Census Area
Enterprise Community
Matanuska-Susitna Borough
Bethel Census Area, Wade Hampton Census Area

Arizona

Empowerment Zone
Pinal
Coconino
Cochise, Santa Cruz, Yuma

Arkansas

Empowerment Zone
Cross, Lee, Monroe, Saint Francis
Chicot (with East Carroll Parish, Louisiana, and Washington, Mississippi)
Phillips (with Coahoma and Quitman, Mississippi)
Enterprise Community
Poinsen
Mississippi
Crittenden, Cross
Woodruff
Newton
Columbia, Ouachita, Union
Lee, Monroe, Phillips
Ashley, Chicot, Desha, Drew
Lee, Saint Francis

California

Empowerment Zone
Riverside
San Diego
Enterprise Community
Imperial
Kern
Santa Cruz
Hanford, Kings
Merced
Riverside
San Benito
Humboldt
Fresno

Colorado

Enterprise Community
Otero

Connecticut

Enterprise Community
Windham

Florida

Empowerment Zone
Collier
Putnam
Palm Beach
Enterprise Community
Highlands
Jackson
Hillsborough

Georgia

Empowerment Zone
Baker, Mitchell
Troup
Crisp, Dooly
Burke, Hancock, Jefferson, McDuffie, Taliaferro, Warren
Bryan
Clay, Quitman, Randolph, Stewart
Enterprise Community
Macon
Lowndes, Tift
Floyd

Idaho

Empowerment Zone
Bannock

Illinois

Empowerment Zone
Kankakee
Enterprise Community
Adams
Hamilton, Saline, White
Jackson
Pulaski
Alexander
Hamilton, Saline, White
Vermillion

Iowa

Enterprise Community
Webster

Kansas

Empowerment Zone
Cherokee

Kentucky

Empowerment Zone
Carter, Lewis, Rowan
Bath, Menifee, Morgan, Rowan, Wolfe
Clay, Leslie, Owsley, Perry
Breathitt, Knott, Lee, Letcher, Perry
Fulton (with New Madrid and Pemiscot, Missouri, and Lake, Tennessee)
Floyd, Magoffin, Martin, Pike
Breathitt, Knott, Lee, Letcher, Perry
Elliott, Lawrence
Casey, Pulaski, Wayne
Clinton, Jackson, Wayne
Bell (with Hancock, Tennessee, and Cumberland, Virginia)
Bell, Whitley (with Campbell, Tennessee)
McCreary (with Scott, Tennessee)
Enterprise Community
Knox
Warren

Louisiana

Empowerment Zone
East Carroll Parish (with Chicot, Arkansas, and Washington, Mississippi)
Grant Parish, Natchitoches Parish, Rapides Parish
Saint Landry Parish
Madison Parish
Plaquemine, Iberville Parish
Saint Landry Parish
Iberville Parish, Pointe Coupee Parish, West Feliciana Parish
Catahoula Parish, Concordia Parish, Franklin Parish, Morehouse Parish, Tensas Parish
Enterprise Community
Thibodaux, Assumption Parish, Saint Charles Parish, Saint James Parish, Saint John the Baptist Parish, Terrebonne Parish
Rapides Parish
Saint Tammany Parish
East Carroll Parish
Saint Mary Parish
Acadia Parish, Saint Landry Parish
Webster Parish
Sabine Parish
Saint Tammany Parish
Saint Mary Parish

Maine

Enterprise Community
Androscoggin

Michigan

Enterprise Community

Lake
Minnesota
Enterprise Community
Beltrami
Pennington
Todd
Wadena
Mississippi
Empowerment Zone
Washington (with Chicot, Arkansas, and East Carroll Parish, Louisiana)
Bolivar, Holmes, Humphreys, Leflore, Sunflower, Washington
Coahoma, Quitman (with Phillips, Arkansas)
Claiborne, Jefferson
Panola, Quitman, Tallahatchie
Yazoo
Enterprise Community
Hinds
Marshall
Madison
Lauderdale
Holmes, Humphreys, Madison
Washington
Leflore
Forrest
Hinds
Adams
Bolivar, Sunflower
Kemper
Tunica
Missouri
Empowerment Zone
Dent
East Prairie
Adair
Scott
New Madrid, Pemiscot (with Fulton, Kentucky, and Lake, Tennessee)
Enterprise Community
Bates
Dunkin
Benton
Butler, Ripley
Nebraska
Empowerment Zone
Scotts Bluff
Buffalo
Enterprise Community
Dawes
New Jersey
Enterprise Community
Cumberland
New Mexico
Empowerment Zone
Curry, Roosevelt
Guadalupe, San Miguel
Dona Ana
Luna
Dona Ana
Enterprise Community
Lea
Hidalgo
Mora
Cibola, McKinley
Chaves
Torrance
Lea
New York
Empowerment Zone
Sullivan
Enterprise Community
Steuben
Chenango
Chautauqua
North Carolina
Empowerment Zone
Edgecombe, Halifax, Wilson
Enterprise Community
Harnett
Robeson
Columbus
Anson
Bertie, Hertford, Martin, Pasquotank, Tyrrell
Halifax, Northampton, Warren
Madison, Watauga
Ohio
Empowerment Zone
Montgomery
Enterprise Community
Athens
Adams, Lawrence, Scioto
Scioto
Oklahoma
Empowerment Zone
Pontotoc
Jackson
Logan
Harmon, Tillman
Choctaw, McCurtain
Okfuskee
Enterprise Community
Logan
Muskogee
Oregon
Enterprise Community
Josephine
Pennsylvania
Enterprise Community
Clarion
Lawrence
Venango
Clinton
Fayette
South Carolina
Enterprise Community
Bamberg
Beaufort
Florence, Williamsburg
Allendale, Barnwell
Orangeburg
Clarendon, Lee, Sumter
Marion
Orangerburg
Beaufort, Colleton, Hampton, Jasper
Horry
South Dakota
Enterprise Community
Beadle, Spink
Tennessee
Empowerment Zone
Hancock (with Bell, Kentucky, and Cumberland, Virginia)
Campbell (with Bell and Whitley, Kentucky)
Lake (with New Madrid and Pemiscot, Missouri, and Fulton, Kentucky)
Scott (with McCreary, Kentucky)
Enterprise Community
Johnson
Tipton
Hardeman
McMinn
Henry
Fayette, Haywood
Claiborne, Grainger, Union
Texas
Empowerment Zone
Pecos
Kaufman
Mitchell
Marion
Uvalde, Val Verde, Zavala
Duval
Webb
Wood
Dimmit
Maverick
Pecos
Cameron, Hidalgo, Starr, Willacy
Presidio
El Paso
Enterprise Community
Hardeman
Jim Wells
Caldwell
Brazos, Grimes, Washington
Gonzales
Harrison, Panola
Burnet
Frio, Medina
Brazos, Madison, Robertson
Ector
Virginia
Empowerment Zone
Cumberland (with Bell, Kentucky, and Hancock, Tennessee)
Enterprise Community
Montgomery, Radford City
Accomack, Northampton
Washington
Enterprise Community
Yakima
Grant
West Virginia
Empowerment Zone
Braxton, Clay, Fayette, Nicholas, Roane
Mingo
McDowell
Enterprise Community
Wyoming
Marion
Logan
Nicholas, Webster
Monongalia
Lincoln

[FR Doc. 94-27455 Filed 11-4-94; 8:45 am]
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[CFDA No.: 84.029M]

Training Personnel for the Education of Individuals With Disabilities—Parent Training and Information Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

PURPOSE OF PROGRAM: The purpose of this program is to support training and information centers for

parents of children with disabilities and persons who work with parents. The purpose of the Centers is to enable parents to work more effectively with professionals in meeting the needs of infants, toddlers, children, and youth with disabilities.

The Training Personnel for the Education of Individuals with Disabilities program supports the National Education Goals by improving services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of achievement called for in the National Education Goals.

ELIGIBLE APPLICANTS: Only parent organizations are eligible to receive grants under this program.

DEADLINE FOR TRANSMITTAL OF APPLICATION: January 10, 1995.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: February 10, 1995.

APPLICATIONS AVAILABLE: November 15, 1994.

AVAILABLE FUNDS: $2,700,000.

RANGE OF AWARDS: $100,000 to $300,000.

ESTIMATED AVERAGE SIZE OF AWARDS: $150,000.

ESTIMATED NUMBER OF AWARDS: 18.

Note: The Department is not bound by any of the estimates in this notice.

PROJECT PERIOD: Up to 60 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 74, 75, 77, 79, 81, 82, and 85; (b) The regulations for this program in 34 CFR Part 316; and (c) The priority in the notice of final priority for empowerment zones, as published elsewhere in this issue of the **Federal Register**.

PRIORITIES: Under 34 CFR 75.105(c)(3) and section 631(e)(1) of the Individuals with Disabilities Education Act the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority under the Parent Training and Information Centers program.

Absolute Priority: Parent Training and Information Centers (34 CFR 316.10(a)).

Competitive Priorities: Within this priority, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet one or more of the following competitive priorities:

(a) Providing parent training and information in one or more Empowerment Zones or Enterprise Communities. Applicants to this competition may receive an additional 5 points if they address the competitive priority relating to Empowerment Zones or Enterprise Communities published in the final priority elsewhere in this issue of the **Federal Register**.

(b) To assist the Secretary in ensuring that awards are distributed geographically on a State or regional basis, throughout all the States, the Secretary awards 15 additional points to an application that provides parent training and information in a State that would be unserved by an existing Parent Training and Information center in FY 1995. These points are in addition to any points the application earns under the selection criteria for the program and competitive preference (a).

Invitational Priorities:

Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Applications that expand outreach to minority parents, who have been underserved in the past.

FOR APPLICATIONS OR INFORMATION CONTACT: Norm Howe, U.S. Department of Education, 60 Independence Avenue, S.W., Washington, D.C. 20202–2651. Telephone: (202) 205–9068. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9999.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice of a discretionary grant competition is the notice published in the **Federal Register**.

Authority: 20 U.S.C. 1431.

Dated: November 1, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–27452 Filed 11–4–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.024D]

Early Education Program for Children With Disabilities—Outreach Projects for Young Children With Disabilities; Notice Inviting Applications for New Awards Under the Early Education Program for Children With Disabilities for Fiscal Year (FY) 1995

PURPOSE OF PROGRAM: To provide Federal financial assistance (a) to address the special needs of children with disabilities, birth through age eight, and their families; and (b) to assist State and local entities in expanding and improving programs and services for these children and their families.

The Early Education Program for Children with Disabilities supports the National Education Goals by helping to ensure that children enter school ready to learn.

ELIGIBLE APPLICANTS: Public agencies and nonprofit private organizations.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: January 17, 1995.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: March 17, 1995.

APPLICATIONS AVAILABLE: November 30, 1994.

AVAILABLE FUNDS: $2,000,000.

ESTIMATED RANGE OF AWARDS: $120,000–140,000.

ESTIMATED AVERAGE SIZE OF AWARDS: $130,000.

ESTIMATED NUMBER OF AWARDS: 15.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 36 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations for this program in 34 CFR Part 309; (c) The priority in the notice of final priority for this program, as published on September 16, 1993 at 58 FR 48548; and (d) The priority in the notice of final priority for empowerment zones, as published elsewhere in this issue of the **Federal Register**.

PRIORITY: Under 34 CFR 75.105(c)(3) and section 623 (a)(1) of the Individuals with Disabilities Education Act the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority under the Early Education Program for Children with Disabilities.

Absolute Priority: Outreach Projects for Young Children with Disabilities

(published on September 16, 1993 at 58 FR 48548).

Competitive Priorities: Within this priority, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applicants that meet one or more of the following competitive priorities:

(a) Applicants to this competition may receive an additional 5 points if they meet the competitive priority relating to Empowerment Zones or Enterprise Communities published in the final priority elsewhere in this issue of the **Federal Register**.

(b) Applicants may receive an additional 10 points if they meet the following competitive priority (as published on September 16, 1993 in 58 FR 48548): projects that provide evidence that they are designed to build the capacity of educational and other agencies to adopt and implement proven models or components of models that (1) address the needs of groups of infants, toddlers, or young children with disabilities and their families from cultural, linguistic, or racial minority groups; or (2) address the unique needs of young children with low-incidence disabilities, such as deaf-blindness. These points are in addition to any points the application earns under the selection criteria and competitive preference (a).

FOR TECHNICAL INFORMATION CONTACT: Lee Coleman, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4615, Switzer Building, Washington, D.C. 20202–2644. Telephone (202) 205–8166. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m and 8 p.m. Eastern time, Monday through Friday.

FOR APPLICATIONS AND GENERAL INFORMATION CONTACT: Sonya Jenkins, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4617, Switzer Building, Washington, D.C. 20202–2644. Telephone (202) 205–9077; Fax telephone (202) 205–8971. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m and 8 p.m. Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice of a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1423.

Dated: November 1, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–27453 Filed 11–4–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.029P]

Training Personnel for the Education of Individuals With Disabilities—Experimental Parent Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

PURPOSE OF PROGRAM: The purpose of this program is to support training and information centers for parents of children with disabilities and persons who work with parents. The purpose of the Centers is to enable parents to work more effectively with professionals in meeting the needs of infants, toddlers, children, and youth with disabilities.

This priority supports both urban and rural experimental parent centers. Experimental urban centers must serve large numbers of parents of children with disabilities located in high density areas. Experimental rural centers must serve large numbers of parents of children with disabilities located in rural areas. The centers may focus on particular aspects of parent training and information services, including but not limited to those activities required under 34 CFR 316.10(a). Experimental projects may include a planning and development phase. (See 34 CFR 316.10(b)).

The Training Personnel for the Education of Individuals with Disabilities program supports the National Education Goals by improving services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of achievement called for in the National Education Goals.

ELIGIBLE APPLICANTS: Only parent organizations are eligible to receive grants under this program.

DEADLINE FOR TRANSMITTAL OF APPLICATION: January 10, 1995.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: February 10, 1995.

APPLICATIONS AVAILABLE: November 15, 1994.

AVAILABLE FUNDS: $200,000.

RANGE OF AWARDS: $25,000 to $50,000.

ESTIMATED AVERAGE SIZE OF AWARDS: $40,000.

ESTIMATED NUMBER OF AWARDS: 5.

Note: The Department is not bound by any of the estimates in this notice.

PROJECT PERIOD: Up to 36 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 74, 75, 77, 79, 81, 82, and 85; (b) The regulations for this program in 34 CFR Part 316; and (c) The priority in the notice of final priority for empowerment zones, as published elsewhere in this issue of the **Federal Register**.

PRIORITIES: Under 34 CFR 75.105(c)(3) and section 631(e)(1) of the Individuals with Disabilities Education Act the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority under the Parent Training and Information Centers program.

Absolute Priority: Experimental Parent Centers (34 CFR 316.10(b)).

Competitive Priority: Within this priority, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority.

Providing parent training and information in one or more Empowerment Zones or Enterprise Communities. Applicants to this competition may receive an additional 5 points if they address the competitive priority relating to Empowerment Zones or Enterprise Communities published in the final priority elsewhere in this issue of the **Federal Register**.

FOR APPLICATIONS OR INFORMATION CONTACT: Norm Howe, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202–2651. Telephone: (202) 205–9068. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9999.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9550; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice of a discretionary grant competition is the notice published in the **Federal Register**.

Authority: 20 U.S.C. 1431.

Dated: November 1, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–27454 Filed 11–4–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
November 7, 1994

Part III

Department of Education

Educational Media Research, Production, Distribution, and Training Programs; Notice

DEPARTMENT OF EDUCATION

Educational Media Research, Production, Distribution, and Training Program

AGENCY: Department of Education.

ACTION: Notice of final funding priorities.

SUMMARY: The Secretary announces funding priorities for fiscal year 1995 and subsequent years under the Educational Media Research, Production, Distribution, and Training Program. The Secretary takes this action to focus Federal financial assistance on those areas of greatest need. These priorities are intended to ensure the continued availability of closed-captioned daytime television programming, provide cultural experiences to deaf and hard of hearing individuals, continue to provide educational books on audiotapes to people who are visually or print disabled, continue the operation of the captioned films and video distribution system, and support video description of national television programming.

EFFECTIVE DATES: These priorities take effect on December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Ernest E. Hairston, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4629, Washington, D.C. 20202–2731. Telephone: (202) 205–9172. Individuals who use a telecommunications devices for the deaf (TDD) may call (202) 205–8169; or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice contains five priorities under the Educational Media Research, Production, Distribution, and Training Program authorized under Part F of the Individuals with Disabilities Education Act (IDEA). The purposes of the program are to promote the general welfare of deaf and hard of hearing individuals and individuals with visual impairments, and to promote the educational advancement of individuals with disabilities.

The priorities in this notice would ensure the continued availability of closed-captioned daytime television programming. In addition, the priorities would support activities that provide cultural experiences to enrich the lives of deaf and hard-of-hearing individuals, including children and youth, as well as adults. The priorities would provide educational reading materials and textbooks on audiotape to persons who are visually or print disabled.

Additional priorities would support a captioned films and videos distribution system to provide hearing impaired and other qualified individuals with access to captioned educational and general interest films and videos on a nonprofit free loan basis, and video description of national television programming in order to make television more accessible to persons with visual impairments.

This program supports the National Education Goals by assisting those with disabilities in school readiness and adult literacy.

On July 28, 1994 the Secretary published a notice of proposed priorities in the **Federal Register** (59 FR 38516).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, seven parties submitted comments. An analysis of the comments and of changes in the priorities since publication of the notice of the proposed priorities follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

General

Comment: Three commenters expressed general support for all of the proposed priorities. Two of the three had additional comments as follows under respective priorities.

Proposed Absolute Priority 1—Closed-Captioned Daytime Television Programs

Comment: One commenter suggested that the priority for Closed-Captioned Daytime Television Programs be modified to require by law that television networks caption all television programming.

Discussion: Priorities cannot be used to impose mandates on third parties such as television networks.

Changes: None.

Comment: One commenter suggested that private sector support for daytime programming should be required while another commenter indicated that a targeted level of private sector funding should not be required for the first project year.

Discussion: The Secretary cannot require private sector funding for captioning of television programming. However, projects are encouraged to seek any support that might become available.

Changes: None.

Comment: One commenter expressed a concern that the priority should be defined in such a way as to not give undue competitive advantage to nonprofit organizations.

Discussion: The priority as written gives no competitive advantage to nonprofit organizations.

Changes: None.

Comment: One commenter indicated that significant weight should be given to consumer preference and how effectively that preference is measured.

Discussion: The Secretary acknowledges the importance of consumer preference and believes that the issue of consumer preference is adequately addressed in the priority.

Changes: None.

Comment: One commenter expressed a concern that cost-effectiveness should be weighed heavily in the criteria.

Discussion: The Secretary believes that sufficient weight is given to cost effectiveness.

Changes: None.

Comment: One commenter indicated an interest in support for closed-captioned basic cable television programming.

Discussion: The Secretary recognizes the importance of access to programs shown on local stations, national commercial and public broadcast networks, as well as syndicated and cable programs shown nationally. In making awards the Secretary will continue to support the closed-captioning of basic cable television programming under existing priorities.

Change: The priority has been clarified by adding the word "cable" to part (6) of the project requirements.

(6) Demonstrate the willingness of major national television networks and *cable* companies to permit captioning of their programs; and

Comment: One commenter urged the Department to make more than one award in order to generate private section support.

Discussion: In announcing proposed priorities, the Secretary does not establish numbers of awards for projects. Information about anticipated number of awards will be provided when the Secretary invites applications for specific competitions.

Changes: None.

Proposed Absolute Priority 2—Cultural Experience for Deaf and Hard of Hearing Individuals

Comment: Two commenters jointly recommended that the priority be expanded to include both school and

community based educational interventions.

Discussion: The Secretary acknowledges the value of intervention at the school and community levels. The Secretary believes that this topic should be addressed under other IDEA program authorities.

Changes: None.

Proposed Absolute Priority 3—Captioned Films and Video Distribution System

Comment: One commenter suggested that distribution, outreach and circulation methods incorporate recommendations which grow out of the soon-to-be awarded Department of Education grant to hold a symposium on the future of captioning.

Discussion: The Secretary deems it improper to mention recommendations that are yet to be made.

Changes: None.

Comment: One commenter suggested that the annual meeting of depository managers and other related personnel should include representatives from the major educational media distribution companies.

Discussion: The Secretary appreciates the commenter's suggestion. Although not a requirement under this priority, the Secretary encourages applicants to consider this as a viable option.

Changes: None.

Comment: One commenter proposed that the priorities include a mandate to study alternative Captioned Films and Video (CFV) catalog and delivery systems, and that a national survey of consumer needs be conducted.

Discussion: The Secretary agrees that a study of alternative approaches and strategies is important to assure that we are making best use of our resources in serving our constituents. We expect that recommendations from the upcoming symposium on the future of captioning will provide us with suggested alternate approaches as information on consumer needs.

Changes: None.

Comment: One commenter proposed that a study be required to explore ways in which the CFV catalog might also incorporate information regarding captioned materials available from sources other than the CFV network.

Discussion: It is not the intent of this priority to advertise materials other than those we distribute through the CFV program.

Changes: None.

Proposed Absolute Priority 4—Recorded Audio Cassettes for Visually and Print Disabled Students

Comment: One commenter proposed that the priority be expanded to include the research and development, production, and distribution of books in computerized form (electronic digital text files). The commenter also suggested that the priority consider for funding the "establishment of a national Clearinghouse for post-secondary education materials in audio and digital text form" and the "establishment of a national repository of electronic text files for accessible text format."

Discussion: The suggested activities go beyond the purpose of the priority announced under section 652(d) of IDEA and are not included within the activities authorized under this section.

Changes: None.

Comment: The commenter suggested inserting professional as one of the classifications under "students" to be served.

Discussion: The Secretary feels that by adding professionals to the population of students to be served under this priority would be going beyond the intent of this project, as originally visioned.

Change: None.

Proposed Absolute Priority 5—Video Description Project

Comment: One commenter recommended that funds be made available for the description of programming designed specifically for classroom instruction or broadcast programs, particularly documentaries, that will be distributed to educational institutions.

Discussion: The Secretary believes that general access to national television programming is of greater importance at this time. However, the type of programs to be described under this priority may include programming that can be used for classrooms.

Changes: None.

Comment: One commenter suggested that the Department should encourage distribution of video described programming through public and educational libraries.

Discussion: The Department believes that the most effective use of resources is to concentrate on national television programming at this time.

Changes: None.

Comment: One commenter expressed the concern that outreach was not identified as an important goal in the priority for video description.

Discussion: The Secretary agrees that outreach (marketing and dissemination) is a necessary component to approved projects for video description. All applications submitted to the Secretary under this priority are evaluated under the established evaluation criteria at 34 CFR 332.32, which includes information related to marketing and dissemination.

Changes: None.

Comment: One commenter suggested that private sector support for video description should be encouraged but not required.

Discussion: The Secretary recognizes the importance of private sector support, although he cannot require it in this priority.

Changes: None.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities:

Absolute Priority 1—Closed-Captioned Daytime Television Programs

Background

This priority would continue and expand closed-captioning of a variety of daytime television programs broadcast nationally for persons who are deaf or hard of hearing during this segment of the day that has proven to be the most difficult in terms of private sector support.

Priority: To be considered for funding under this priority, a project must—

(1) Include the criteria used to determine which programs are proposed for captioning. These criteria must take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be captioned;

(3) For each proposed program to be captioned, identify the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour and the projected cost per hour for each method used;

(5) Provide and maintain back-up systems that would ensure successful, timely captioning service;

(6) Demonstrate the willingness of major national television networks and cable companies to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Absolute Priority 2—Cultural Experiences for Deaf and Hard of Hearing Individuals

Background

This priority supports a variety of cultural activities designed to enrich the lives of deaf and hard of hearing individuals, including children and youth, as well as adults. These activities must use an integrated approach that mixes children, youth, and adults, who are deaf and hard of hearing with those who can hear while conducting cultural experiences that will increase public awareness and understanding of deafness and other hearing impairments and of the artistic and intellectual achievements of deaf and hard of hearing individuals.

During FY 1992 the Department funded projects that: (1) Provided theatrical experiences for deaf and hard of hearing individuals, and (2) used integrated approaches by having among cast members a mixture of deaf, hard of hearing and hearing performers. During FY 1993 cultural experiences were extended specifically to younger people with hearing impairments and to the creation of art as well as theatrical experiences, using the same approaches. Projects under this proposed priority can include a variety of artistic approaches such as the creation of works of art (painting, drawing, designing, etc.), dance, and storytelling, as well as developing and performing dramatic productions. A grantee *may not* use funds under this priority for passive activities such as viewing a play or video, or passively watching a storyteller or artist at work.

Priority

To be considered for funding under this priority, a project must—

(1) Use an integrated approach that mixes children, youth, and adults who are deaf and hard of hearing, with those who are hearing in carrying out project activities; and

(2) Develop and implement strategies that will increase public awareness and understanding of deafness and other hearing impairments and of the artistic and intellectual achievements of deaf and hard of hearing individuals, including children, youth, and adults. Outreach activities such as promoting the project to schools, community organizations, news media, and relevant national organizations are encouraged.

Invitational Priority

Within this absolute priority 2, the Secretary is particularly interested in applications that meet the following invitational priority. However, pursuant to 34 CFR 75.105(c)(i), an application that meets this invitational priority does not receive competitive or absolute preference over applications that do not meet this priority:

Projects that include people from a variety of cultural, racial, and ethnic backgrounds.

Absolute Priority 3—Captioned Films and Videos Distribution System

Background

This priority would support the operation of a captioned films/videos distribution system which provides deaf and hard of hearing individuals, as well as other eligible individuals with disabilities, with access to captioned educational and general interest films and videos on a nonprofit free-loan basis. Activities under this priority include, but are not limited to: (1) A computerized user-registration process; (2) circulation of captioned films and videos; (3) development or updating of a catalog of captioned films and videos in the collection; and (4) outreach activities. This priority would provide students and other eligible individuals with disabilities with captioned films and videos so they may benefit from the same educational media used to enrich the educational experiences of students and other individuals who do not have disabilities.

Priority

To be considered for funding under this priority, the project must—

(1) Develop strategies and procedures to be implemented in operating a distribution system, consisting of local and regional centers including depositories, and one central general interest and educational films/video center. Local and regional centers may include State schools for disabled individuals, public or private school systems, public libraries, colleges or universities, or other distribution points that distribute captioned films/videos.

(2) Ensure that the system permits interdepository circulation of captioned films/videos, allows individuals, depositories, and local and regional centers to access booking information from the computerized depositories and the general interest and educational films/video center via modem and *generic* communication software, and provides immediate confirmation or denial of a request;

(3) Establish and describe the computerized registration procedures that will be used to register users. The current computerized system configuration may be used as a basis;

(4) Develop and implement criteria and procedures for replacing irreparable films/videos;

(5) Prepare, update, and distribute copies of a catalog listing all captioned films/videos available under this project, including copies of the lesson guides as they become available;

(6) Convene an annual meeting of depository managers, librarians, and audiovisual and other personnel from local, regional, and State education agencies for the purpose of training, planning, sharing, brainstorming, and other activities related to improving the access of eligible individuals to audiovisual materials. The Washington, D.C. metropolitan area will be the site of the meeting;

(7) Implement outreach activities, especially activities that reach out to local school systems to make them aware of the open and closed captioned materials that are available to them under this program and from other sources; and

(8) Submit quarterly progress reports to the grants and project officers.

Absolute Priority 4—Recorded Audio Cassettes for Visually and Print Disabled Students

Background

This priority would support recording, producing, duplicating, and distributing 15/16 ips (inch per second) four-track cassette versions of textbooks and other educational reading materials for students (elementary, secondary, postsecondary & graduate) who are visually or print disabled. These cassette tapes will help provide equal educational opportunities to target students and lessen some of the barriers they face in classrooms.

Priority

To be considered for funding under this priority, the project must—

(1) Handle all requests for materials, including confirmation of eligibility by disability;

(2) Arrange for use of copyrights from publishers of supplied textbooks;

(3) Record or duplicate the books on 15/16 ips (inch per second), four-track cassettes of one hour per track recording time. (Publishers must be provided rights to copies of the master tape and rights to market the cassettes as they see fit);

(4) Mail the cassettes on a free-loan, postage paid basis;

(5) Handle returned cassettes, preservative re-recording, and all other associated administrative and circulation functions; and

(6) To the extent that funds are not sufficient to meet the demand for free

materials, place a priority on providing free materials that are not otherwise required to be provided by educational agencies or institutions.

Absolute Priority 5—Video Description Project

Background

This priority supports the description of national television programming in order to make television more accessible to persons with visual impairments. The intent of this priority is to provide access to a diversity of programming available in order to enhance shared educational, social, and cultural experiences for persons who are visually impaired. The range of programs proposed for description may include, but is not limited to, children's programs, prime time programming, emergency broadcasts, sports programs, and documentaries.

Priority

To be considered for funding under this priority, a project must—

(1) For selecting programs to be video described, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experience of individuals with visual impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be described;

(3) For each program to be described, identify the source of private or other public support, if any, and the projected dollar amount of that support;

(4) Identify the methods to be used in the provision of described video;

(5) Demonstrate the willingness of major national television networks and cable companies to permit video description of their programs; and

(6) Implement procedures for monitoring the extent to which an accurate description is provided and use this information to make refinements in the video description operations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations 34 CFR Parts 330, 331, and 332.

Program Authority: 20 U.S.C. 1451, 1452.

Dated: November 1, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

(Catalogue of Federal Domestic Assistance Number: 84.026, Educational Media Research, Production, Distribution, and Training Program)

[FR Doc. 94–27456; Filed 11–4–94; 8:45 am]

BILLING CODE 4000–01–P

Educational Media Research, Production, Distribution, and Training Program; Notice inviting applications for new awards under the Educational Media Research, Production, Distribution, and Training Program for Fiscal Year (FY) 1995

PURPOSE OF PROGRAM: The purposes of this program are to promote the general welfare of the deaf, hard-of-hearing, and visually impaired individuals, and the educational advancement of individuals with disabilities.

This program supports the National Education Goals by assisting those with disabilities in school readiness and adult literacy.

ELIGIBLE APPLICANTS: Profit and nonprofit public and private agencies, organizations, and institutions are eligible to apply for a grant.

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

APPLICATIONS AVAILABLE: November 30, 1994

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 332.

PRIORITIES: The priorities in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to these competitions.

FOR TECHNICAL INFORMATION CONTACT: Dr. Ernest Hairston, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4629, Washington, D.C. 20202–2644. Telephone (202) 205–9172. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8169; or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. eastern time, Monday through Friday.

FOR APPLICATION OR GENERAL INFORMATION CONTACT: Jeffrey Payne, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4627, Washington, D.C. 20202–2644. Telephone (202) 205–8894. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. eastern time, Monday through Friday.

EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Closed-Captioned Daytime Television Program (CFDA 84.026S).	2/17/95	4/17/95	$1,112,000	$371,000–556,000	$371,000	2 to 3	Up to 36.
Cultural Experiences for Deaf and Hard of Hearing Individuals (CFDA 84.026T).	3/15/95	5/15/95	$400,000	$100,000–400,000	$100,000	1 to 4	Up to 36.
Captioned Films/Video Distribution System (CFDA 84.026N).	3/31/95	5/30/95	$1,500,000	$900,000–1,500,000	$1,500,000	1	Up to 36.
Recorded Audio Cassettes for Visually and Print Disabled Students (CFDA 84.026K).	2/15/95	4/17/95	$3,600,000	$3,600,000	$3,600,000	1	Up to 36.

EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING—Continued

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Video Description Project (CFDA 84.026Q).	2/17/95	4/17/95	$500,000	$250,000–500,000	$250,000	1 to 2 .	Up to 36.

NOTE: The Department is not bound by any estimates in this notice.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice of a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1451, 1452.

Dated: November 1, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–27457; Filed 11–4–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
November 7, 1994

Part IV

Department of Commerce

Economic Development Administration

Economic Development Assistance Programs Under the Dire Emergency Supplemental Appropriations Act; Availability of Funds: Southern California Earthquake; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 940963–4263]

Economic Development Assistance Programs Under the Dire Emergency Supplemental Appropriations Act, FY 1994; Availability of Funds—Southern California Earthquake

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) announces the policies and the application procedures for economic adjustment assistance as authorized by Public Law 103–211. These funds are designed to support the emergency requirements of economic adjustment assistance for local communities arising from the consequences of the January 17, 1994, earthquake in Southern California.

DATES: This notice is effective November 7, 1994. Funds shall remain available until expended.

ADDRESSES: Interested parties should contact the EDA Disaster Field Office for a proposal package. The EDA Disaster Field Office is located at 150 East Colorado Boulevard, Suite 101, Pasadena, California 91105–6831; telephone (818) 583–6831; and Fax (818) 583–6832.

FOR FURTHER INFORMATION CONTACT: Potential applicants should contact the EDA Disaster Field Office at the address noted above, or the Director, Economic Adjustment Division, Economic Development Administration, Room 7327, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–2659.

SUPPLEMENTARY INFORMATION:

Buy American-Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

Refer to the Notice published on March 30, 1994, in the **Federal Register** (59 FR 14996) for information on EDA's general policies and other requirements.

Authority

Support for this program is authorized under the contingency fund provided to the President under Public Law 103–211, the Emergency Supplemental Appropriations Act of 1994.

Catalog of Federal Domestic Assistance (CFDA)

The Special Economic Development and Adjustment Assistance Program—Long-Term Economic Deterioration (LTED) and Sudden and Severe Economic Dislocation (SSED) is listed under CFDA 11.307.

Program Objectives

Funds will be used for the creation of a local Infrastructure Development Fund that will make funds available to repair or upgrade local infrastructure damaged by the earthquake which is not eligible for Federal Emergency Management Agency (FEMA) assistance. The Infrastructure Development Fund will be capitalized by EDA and will be administered by the City of Los Angeles and other local jurisdictions. These funds will be used to leverage existing financing through matching grants, loans, and subordinated debt. Local communities will identify the infrastructure projects to receive assistance. Eligible projects would include earthquake damaged non-public infrastructure ineligible for FEMA assistance, such as a privately-owned water system, and repair projects in which it makes economic sense to upgrade the infrastructure beyond pre-earthquake specifications.

Additional program objectives are described in the **Federal Register** of March 30, 1994 (59 FR 15005) announcing the policies and application procedures for EDA's Fiscal Year 1994 programs.

Funding Availability

Funds in the amount of $50 million are available for this disaster recovery program and shall remain available until expended.

Funding Instrument

Funds will be awarded through grants under the Sudden and Severe Economic Dislocation (SSED) program under Title IX of the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136; 42 U.S.C. 3121 *et seq.*) (PWEDA).

Eligible Applicants

Eligible applicants include the city, town, or subdivision of the State of California, or a consortium of such political subdivisions.

Application Procedures

Application procedures, competitive selection criteria grant rates and post-approval project implementation information for the SSED program are applicable to the award of disaster adjustment assistance and are described in the **Federal Register** of March 30, 1994 (59 FR 15005), that announces EDA's FY 1994 Notice of Availability of Funds, or such subsequent annual Notices of the Availability of Funds. EDA will respond with direct technical support of the recovery by assisting local and state officials with the assessment of the economic injury caused by the disaster and the development of an economic recovery plan.

Implementation projects must be consistent with and preferably and outgrowth of the recovery plan.

Evaluation Criteria

As described in EDA's **Federal Register** Notice of Availability of Funds for FY 1994, proposals will be evaluated by EDA based upon conformance with statutory and regulatory requirements, the economic adjustment needs of the area, leveraging of program funds, the merits of the proposed project in addressing those needs and the potential applicants' ability to manage the grant effectively. In the case of a Presidentially declared natural disaster, the customary area eligibility job loss threshold criteria is waived.

Proposal Submission Procedures

Proposals for economic adjustment assistance authorized under Public Law 103–211, will be submitted to EDA's Pasadena Field Office, as noted in the **ADDRESSES** section of this Notice.

Dated: October 13, 1994.

William W. Ginsberg,

Assistant Secretary for Economic Development.

[FR Doc. 94–27550 Filed 11–4–94; 8:45 am]

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federal register

Monday
November 7, 1994

Part V

Department of Health and Human Services

Centers for Disease Control and Prevention

Draft Guideline for Isolation Precautions in Hospitals; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for Isolation Precautions in Hospitals: Part I. "Evolution of Isolation Practices" and Part II. "Recommendations for Isolation Precautions in Hospitals"; Notice of Comment Period

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice is a request for review and comment of the draft Guideline for Isolation Precautions in Hospitals. The Guideline consists of two parts, "Evolution of Isolation Practices" and "Recommendations for Isolation Precautions in Hospitals," and was prepared by the Hospital Infection Control Practices Advisory Committee (HICPAC) and the National Center for Infectious Diseases (NCID), CDC.

DATES: Written comments on the draft document must be received on or before January 6, 1995.

ADDRESSES: Comments on this document should be submitted in writing to the CDC, Attention: Isolation Guideline Information Center, Mailstop A07, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: The Isolation Guideline Information Center, telephone (404) 332–2569.

SUPPLEMENTARY INFORMATION: This document updates and replaces the previously published CDC Guideline for Isolation Precautions in Hospitals (Infect Control 1983;4:245–325, Am J Infect Control 1984;12:103–163, and HHS Publ. No. [CDC] 83–8314). Part I, "Evolution of Isolation Practices," reviews the evolution of isolation practices in U.S. hospitals including their advantages, disadvantages, and controversial aspects and provides the background for the HICPAC-consensus recommendations contained in Part II, "Recommendations for Isolation Precautions in Hospitals."

HICPAC was established in 1991 to provide advice and guidance to the Secretary, DHHS; the Assistant Secretary for Health, DHHS; the Director, CDC; and the Director, NCID, regarding the practice of hospital infection control and strategies for surveillance, prevention, and control of nosocomial infections in U.S. hospitals. The committee also advises the CDC on periodic updating of guidelines and other policy statements regarding prevention of nosocomial infections.

The Guideline for Isolation Precautions in Hospitals is the second of a series of CDC guidelines being revised by HICPAC and NCID, CDC.

Dated: November 1, 1994.

Claire V. Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC).

Guideline for Isolation Precautions in Hospitals

Executive Summary

The Guideline for Isolation Precautions in Hospitals was revised to meet the following objectives: (1) to be epidemiologically sound, (2) to recognize the importance of all body fluids, secretions, and excretions in the transmission of nosocomial pathogens, (3) to contain adequate precautions for infections transmitted by the airborne, droplet, and contact routes of transmission, (4) to be as simple and user friendly as possible, and (5) to use new terms to avoid confusion with existing infection control and isolation systems.

The revised guideline contains two tiers of precautions. In the first, and most important, tier are those precautions designed for the care of all patients in hospitals regardless of their diagnosis or presumed infection status. Implementation of these "Standard Precautions" is the primary strategy for successful nosocomial infection control. In the second tier are precautions designed only for the care of specified patients. These additional "Transmission-based Precautions" are used for patients known or suspected to be infected or colonized with epidemiologically important pathogens that can be transmitted by airborne or droplet transmission or by contact with dry skin or contaminated surfaces.

Standard Precautions synthesize the major features of Universal (Blood and Body Fluid) Precautions (designed to reduce the risk of transmission of bloodborne pathogens) and Body Substance Isolation (designed to reduce the risk of transmission of pathogens from moist body substances). Standard Precautions apply to (1) blood, (2) all body fluids, secretions, and excretions regardless of whether or not they contain visible blood, (3) nonintact skin, and (4) mucous membranes. Standard Precautions are designed to reduce the risk of transmission of microorganisms from both recognized and unrecognized sources of infection in hospitals.

Transmission-based Precautions are designed for patients documented or suspected to be infected or colonized with highly transmissible or epidemiologically important pathogens for which additional precautions beyond Standard Precautions are needed to interrupt transmission in hospitals. There are three types of Transmission-based Precautions: Airborne Precautions, Droplet Precautions, and Contact Precautions. They may be combined together for diseases that have multiple routes of transmission. When used either singularly or in combination, they are to be used in addition to Standard Precautions.

The revised guideline also lists specific clinical syndromes or conditions in both adult and pediatric patients that are highly suspicious for infection and identifies appropriate Transmission-based Precautions to use on an empiric, temporary basis until a diagnosis can be made; these empiric, temporary precautions are also to be used in addition to Standard Precautions.

A working draft of this guideline was reviewed by experts in infection control. However, all recommendations in the guideline may not reflect the opinions of all reviewers.

Introduction

To assist hospitals in maintaining up-to-date isolation practices, HICPAC [1] has updated the CDC recommendations for isolation precautions for use in hospitals. The recommendations are based on the latest epidemiologic information on transmission of infection in hospitals; they supersede previous CDC recommendations for isolation precautions for use in hospitals.[2–4]

The recommendations are intended primarily for use in the care of patients in acute-care hospitals, although some of the recommendations may be applicable for some patients receiving care in extended-care facilities. The recommendations are not intended for use in day care, well care, or domiciliary care programs. Because (1) there have been few studies to test the efficacy of isolation precautions, and (2) gaps still exist in the knowledge of the epidemiology and modes of transmission of some diseases, disagreement with some of the recommendations is expected.

HICPAC recognizes that the goal of preventing transmission of infections in hospitals can be accomplished by multiple means, and that hospitals will modify the recommendations according to their needs and circumstances and as directed by federal, state, or local regulations. Modification of the recommendations is encouraged if (1) the principles of epidemiology and

disease transmission are maintained, and (2) precautions are included to interrupt spread of infection by all routes that are likely to be encountered in the hospital.

Part I. Evolution of Isolation Practices

Early Isolation Practices

The first published recommendations for isolation precautions in the United States appeared as early as 1877, when a hospital handbook recommended placing patients with infectious diseases in separate facilities,[5] which ultimately became known as infectious disease hospitals. Although this practice segregated infected patients from noninfected patients, nosocomial transmission continued to occur because infected patients were not separated from each other according to their disease, and few, if any, aseptic procedures were practiced. Personnel in infectious disease hospitals began to combat problems of nosocomial transmission by setting aside a floor or ward for patients with similar diseases[6] and by practicing aseptic procedures recommended in nursing textbooks published from 1890 to 1900.[5]

In 1910, isolation practices in U.S. hospitals were altered by the introduction of the cubicle system of isolation which placed patients in multiple-bed wards.[6] With the cubicle system, hospital personnel used separate gowns, washed their hands with antiseptic solutions after patient contact, and disinfected objects contaminated by the patient. These nursing procedures, designed to prevent transmission of pathogenic organisms to other patients and personnel, became known as "barrier nursing." Use of the cubicle system of isolation and barrier nursing procedures provided general hospitals with an alternative to placing some patients in infectious disease hospitals.

During the 1950s, U.S. infectious disease hospitals, except those designated exclusively for tuberculosis, began to close. In the mid-1960s, tuberculosis hospitals also began to close, partly because general hospital or outpatient treatment became preferred for patients with tuberculosis. Thus, by the late 1960s patients with infectious diseases were housed in wards in general hospitals, either in specially designed, single-patient isolation rooms or in regular single or multiple-patient rooms.

CDC Isolation Systems

CDC Isolation Manual

In 1970, CDC published a detailed manual entitled *Isolation Techniques for Use in Hospitals* to assist general hospitals with isolation precautions;[2] a revised edition appeared in 1975.[3] The manual could be applied in small community hospitals with limited resources as well as in large metropolitan university-associated medical centers.

The manual introduced the category system of isolation precautions. It recommended that hospitals use one of seven isolation categories (Strict Isolation, Respiratory Isolation, Protective Isolation, Enteric Precautions, Wound and Skin Precautions, Discharge Precautions, and Blood Precautions). The precautions recommended for each category were determined almost entirely by the epidemiologic features of the diseases grouped in the category, primarily their routes of transmission. Certain isolation techniques, believed to be the minimum necessary to prevent transmission of all diseases in the category, were indicated for each isolation category. Because all diseases in a category did not have the same epidemiology (i.e., were not spread by exactly the same combination of modes of transmission), with some requiring fewer precautions than others, more precautions were suggested for some diseases than were necessary. This disadvantage of "over-isolation" for some diseases was offset by the convenience of having a small number of categories. More importantly, the simple system required personnel to learn only a few established routines for applying isolation precautions. To make the system even more user friendly, instructions for each category were printed on color-coded cards and placed on the doors, beds, and/or charts of patients on isolation precautions.

By the mid-1970s, 93% of U.S. hospitals had adopted the isolation system recommended in the manual.[7] However, neither the efficacy of the category approach in preventing spread of infections nor the costs of using the system were evaluated by empirical studies.

By 1980, hospitals were experiencing new endemic and epidemic nosocomial infection problems, some caused by multidrug-resistant microorganisms and others caused by newly recognized pathogens, which required different isolation precautions from those specified by any existing isolation category. There was increasing need for isolation precautions to be directed more specifically at nosocomial transmission in special-care units, rather than at the intrahospital spread of infectious diseases acquired in the community.[8] Infection control professionals and nursing directors in hospitals with particularly sophisticated nursing staffs were increasingly calling for new isolation systems that would tailor precautions to the modes of transmission for each infection and avoid the over-isolation inherent in the category-specific approach. Further, new facts about the epidemiology and modes of transmission of some diseases made it necessary for CDC to revise the isolation manual. Toward that end, during 1981–1983, CDC Hospital Infections Program personnel consulted with infectious disease specialists in medicine, pediatrics, and surgery; hospital epidemiologists; and infection control practitioners about revising the manual.

CDC Isolation Guideline

In 1983, the CDC Guideline for Isolation Precautions in Hospitals[4] (hereafter referred to as the isolation guideline) was published to take the place of the 1975 isolation manual; it contained many important changes. One of the most important was the increased emphasis on decision-making on the part of users. Unlike the 1975 manual, which encouraged few decisions on the part of users, the isolation guideline encouraged decision-making at several levels.[9-10] First, hospital infection control committees were given a choice of selecting between category-specific or disease-specific isolation precautions or using the guideline to develop a unique isolation system appropriate to their hospital's circumstances and environment. Second, personnel who placed a patient on isolation precautions were encouraged to make decisions about the individual precautions to be taken, (e.g., whether the patient's age, mental status, or condition indicated that a private room was needed to prevent sharing of contaminated articles). Third, personnel taking care of patients on isolation precautions were encouraged to decide whether they needed to wear a mask, gown, or gloves based on the likelihood of exposure to infective material. Such decisions were deemed necessary to isolate the infection but not the patient and to reduce the costs associated with unnecessary isolation precautions.

In the category-specific section of the guideline, existing categories were modified, new categories were added, and many infections were reassigned to different categories. The old category of Blood Precautions, primarily directed toward patients with chronic carriage of hepatitis B virus (HBV), was renamed Blood and Body Fluid Precautions and expanded to include (1) patients with AIDS and (2) body fluids other than blood. The old category of Protective

Isolation was deleted because of studies demonstrating its lack of efficacy in general clinical practice in preventing the acquisition of infection by the immunocompromised patient for whom it had originally been described.[11-12] The 1983 guideline contained the following categories of isolation: Strict Isolation, Contact Isolation, Respiratory Isolation, Tuberculosis (acid-fast bacilli [AFB]) Isolation, Enteric Precautions, Drainage/Secretion Precautions, and Blood and Body Fluid Precautions. As with the category approach in the former CDC isolation manuals, these categories tended to over-isolate some patients.

In the disease-specific section of the guideline, the epidemiology of each infectious disease was considered individually by advocating only those precautions (e.g., private room, mask, gown, and gloves) needed to interrupt transmission of the infection. In place of the categories and signs of the category-specific approach, a chart listed all diseases posing the threat of in-hospital transmission with checks in columns indicating which precautions were required for each. Because precautions were individualized for each disease, hospitals using the system were encouraged to provide more initial training and in-service education and to encourage a much higher level of attention from patient-care personnel. Although disease-specific isolation precautions eliminated "over-isolation," personnel might be prone to mistakes in applying the precautions, especially if the disease was not regularly seen in the hospital,[9-10] if there was a delay in diagnosis, or if there was a misdiagnosis. Placing disease-specific isolation precautions in a hospital computerized information system resulted in more accurate use of the system.[13]

Since gaps existed in the knowledge of the epidemiology of some diseases, disagreement was expected, and occurred, regarding the placement of individual diseases within given categories, especially diseases with a respiratory component of transmission.[14] Placing measles in Respiratory Isolation (designed to prevent transmission of large-particle droplets) rather than in a category that had provisions for preventing transmission by airborne droplet nuclei and placing rubella and respiratory syncytial virus (RSV) infection in Contact Isolation were controversial.[15] There was also disagreement about the lack of a recommendation for adult patients with influenza, the need for a private room for pediatric patients with RSV infections, and the length of time that precautions should be maintained.[15] The lack of empiric studies on the efficacy and costs of implementing the recommendations contributed to the disagreements.

As new epidemiologic data became available, several subsequent CDC reports [16-18] updated portions of the isolation guideline. Updated recommendations for management of patients with suspected hemorrhagic fever were published in 1988.[16] The recommendation for Respiratory Isolation for acute erythema infectiosum was superseded by a 1989 report that recommended Respiratory Isolation for human parvovirus B19 (the causative agent for erythema infectiosum) only when infected patients were in transient aplastic crisis or had immunodeficiency and chronic human parvovirus B19 infection.[17]

Recommendations for Tuberculosis (AFB) Isolation were updated in 1990 [18] because of heightened concern about nosocomial transmission of multidrug-resistant tuberculosis,[19-20] particularly in settings where persons with human immunodeficiency virus (HIV) infection were receiving care. The 1990 tuberculosis guidelines emphasized (1) placing a hospital patient with confirmed or suspected tuberculosis in a private room that has lower, or negative, air pressure compared with surrounding areas, (2) reducing mycobacterial contamination of air by dilution and removal of airborne contaminants, and (3) wearing particulate respirators, rather than standard surgical masks, when hospital personnel shared air space with an infectious tuberculosis patient. Subsequent recommendations reemphasized the importance of early diagnosis and treatment of tuberculosis.[21] In 1993, a second edition of the guidelines for preventing the transmission of tuberculosis in health care facilities was published in draft for public comment.[22] After review of written comments, the guidelines were modified and published.[23]

Universal Precautions

In 1985, largely because of the HIV epidemic, isolation practices in the United States were dramatically altered by the introduction of a new strategy for isolation precautions, which became known as Universal Precautions (UP). Following the initial reports of hospital personnel becoming infected with HIV through needlesticks and skin contamination with patients' blood, a widespread outcry created the urgent need for new isolation strategies to protect hospital personnel from bloodborne infections. The subsequent modification of isolation precautions in some hospitals produced several major strategic changes and sacrificed some measures of protection against patient-to-patient transmission in the process of adding protection against patient-to-personnel transmission. In acknowledgment of the fact that many patients with bloodborne infections are not recognized, the new UP approach placed emphasis for the first time to applying Blood and Body Fluid Precautions universally to all persons regardless of their presumed infection status.[24] Until this time, most patients placed on isolation precautions were those for whom a diagnosis of an infectious disease had been made or was suspected. This provision led to the new name of Universal Precautions.

In addition to emphasizing prevention of needlestick injuries and the use of traditional barriers such as gloves and gowns, UP expanded Blood and Body Fluid Precautions to include use of masks and eye-coverings to prevent mucous membrane exposures during certain procedures and the use of individual ventilation devices when the need for resuscitation was predictable. This approach, and particularly the techniques for preventing mucous membrane exposures, was reemphasized in subsequent CDC reports that contained recommendations for prevention of HIV transmission in health care settings.[25-28]

In 1987, one of these reports [27] stated that implementation of UP for all patients eliminated the need for the isolation category of Blood and Body Fluid Precautions for patients known or suspected to be infected with bloodborne pathogens; however, the report stated that other category- or disease-specific isolation precautions recommended in the CDC isolation guideline [4] should be used as necessary if infections other than bloodborne infections were diagnosed or suspected.

The 1987 report was updated by a 1988 report [28] that emphasized two important points: (1) blood was the single most important source of HIV, HBV, and other bloodborne pathogens in the occupational setting, and (2) infection control efforts for preventing transmission of bloodborne pathogens in health care settings must focus on preventing exposures to blood as well as on delivery of HBV immunization. The report stated that UP applied to blood, body fluids that had been implicated in the transmission of bloodborne infections (semen and vaginal secretions), body fluids from which the risk of transmission was unknown (amniotic, cerebrospinal, pericardial, peritoneal, pleural, and synovial fluids),

and to any other body fluid visibly contaminated with blood, but not to feces, nasal secretions, sputum, sweat, tears, urine, or vomitus unless they contained visible blood. Although HIV and HBV surface antigen (HBsAg) had been found in some of the fluids, secretions, or excretions to which UP did not apply, epidemiologic studies in the health care and community setting had not implicated these substances in the transmission of HIV and HBV infections. However, the report noted that some of the fluids, secretions, and excretions not covered under UP represented a potential source for nosocomial and community-acquired infections with other pathogens and referred readers to the CDC isolation guideline.

Body Substance Isolation

In 1987, a new system of isolation, called Body Substance Isolation (BSI), was proposed, after 3 years of study by infection control personnel at the Harborview Medical Center in Seattle and the University of California at San Diego, as an alternative to diagnosis-driven isolation systems.[29] BSI focused on the isolation of all moist and potentially infectious body substances (blood, feces, urine, sputum, saliva, wound drainage, and other body fluids) from all patients, regardless of their presumed infection status, primarily through the use of gloves. Personnel were instructed to put on clean gloves just before contact with mucous membranes and nonintact skin, and to wear gloves for anticipated contact with moist body substances. In addition, a "Stop Sign Alert" was used to instruct persons wishing to enter the room of some patients with infections transmitted exclusively or in part by the airborne route to check with the floor nurse, who would determine whether a mask should be worn; personnel were to be immune to or immunized against selected infectious diseases transmitted by airborne or droplet routes (measles, mumps, rubella, and varicella) or they were not to enter the rooms housing patients with these diseases. Other issues related to implementing BSI in a university teaching hospital were described.[30]

Among the advantages cited for BSI were that it was a simple, easy to learn and administer system, and that it avoided the assumption that (1) individuals without known or suspected diagnoses of transmissible infectious diseases were free of risk to patients and personnel, and (2) that only certain body fluids were associated with transmission of infection. The disadvantages of BSI included the added cost of increased use of barrier equipment, particularly gloves;[31] the difficulty in maintaining routine application of the protocol for all patients; the uncertainty about the precautions to be taken when entering a room with a "Stop Sign Alert"; and the potential for misapplication of the protocol to overprotect personnel at the expense of the patient.[32]

In a prospective study,[33] a combination use of gown and glove protocols similar to BSI led to lower infection rates in a pediatric intensive care unit (ICU), and in other studies similar combinations of barriers were associated with lower rates of nosocomial RSV infection in a pediatric ICU[34] and of resistant gram-negative organisms in an acute-care hospital.[35] However, in none of these studies, initiated before publication of BSI, were the authors attempting to evaluate BSI, nor were they able to separate the effect of gloves from that of gowns or from gloves and gowns used in combination.

Controversial aspects of BSI have been summarized.[15, 16] BSI appeared to replace some, but not all, of the isolation precautions necessary to prevent transmission of infection. BSI did not contain adequate provisions to prevent (1) droplet transmission of serious infections in pediatric populations (e.g., invasive *Haemophilus influenza, Neisseria meningitides* meningitis and pneumonia, and pertussis), (2) direct or indirect contact transmission of epidemiologically important microorganisms from dry skin or environmental sources (e.g., *Clostridium difficile* and vancomycin-resistant enterococci), or (3) true airborne transmission of infections transmitted over long distances by floating droplet nuclei. Although BSI emphasized that a private room was indicated for some patients with some diseases transmitted exclusively or in part by the true airborne route, it did not emphasize the need for special ventilation for patients known or suspected of having pulmonary tuberculosis or other diseases transmitted by airborne droplet nuclei. The lack of emphasis on special ventilation was of particular concern to CDC in the early 1990s because of multidrug-resistant tuberculosis.[18-19]

BSI and UP shared many similar features designed to prevent the transmission of bloodborne pathogens in hospitals. However, there was an important difference in the recommendation for glove use and handwashing. Under UP, gloves were recommended for anticipated contact with blood and specified body fluids and hands were to be washed immediately after gloves were removed.[27-28] Under BSI, gloves were recommended for anticipated contact with any moist body substance but handwashing after glove removal was not required unless the hands were visibly soiled.[29] The lack of emphasis on handwashing after glove removal was cited as one of the theoretical disadvantages of BSI.[15, 37-38] Using gloves as a protective substitute for handwashing may have provided a false sense of security, resulted in less handwashing, increased the risk of nosocomial transmission of pathogens because hands can become contaminated even when gloves are used[39] and are easily contaminated in the process of removing gloves, and contributed to skin problems and allergies associated with the use of gloves.[40-41] On the other hand, proponents of BSI have noted that studies of handwashing have indicated relatively low compliance by hospital personnel,[42-43] that glove use may have been easier to manage than handwashing, and that frequent handwashing may have led to eczema, skin cracking, or, in some persons, clinical damage to the skin of the hands.[44] Although use of gloves may have been better than no handwashing, the efficacy of using gloves as a substitute for handwashing has not been demonstrated.

OSHA Bloodborne Pathogens Regulations

In 1989, the Occupational Safety and Health Administration (OSHA) published a proposed rule regarding occupational exposure to bloodborne pathogens in hospitals and other health care settings.[45] The proposed rule, based on the concept of UP, raised concerns in the infection control community. Among them were concerns about the use of "visibly bloody" as a marker for the infectious risk of certain body fluids and substances, the imbalance toward precautions to protect personnel and away from protection for patients, the lack of proven efficacy of UP, and the costs for implementing the proposed regulations.[46-50] After a series of OSHA public hearings and review of written comments, the proposed rule was modified and the final rule on occupational exposure to bloodborne pathogens was published in 1991.[51] Although the final rule was expected to improve occupational safety in the care of patients infected with bloodborne pathogens, its impact on the cost of patient care and on nosocomial infection control has remained undefined. Information on complying with the OSHA final rule has been made

available by the American Hospital Association [52] and others.[53]

The Need for a New Isolation Guideline

By the early 1990s, isolation had become an infection control conundrum.[54] Although many hospitals had incorporated all or portions of UP into their category- or disease-specific isolation system and others had adopted all or portions of BSI,[55-56] there was much local variation in the interpretation and use of UP and BSI and a variety of combinations was common. Further, there was considerable confusion about which body fluids or substances required precautions under UP and BSI. Many hospitals espousing UP were really using BSI and vice-versa. Moreover, there was continued lack of agreement about the importance of handwashing when gloves were used [14-15,27-29,37-38,57-58] and the need for additional precautions beyond BSI to prevent airborne, droplet, and contact transmission.[14-15,27-29,31,36,59-60] Some hospitals had not implemented appropriate guidelines for preventing transmission of tuberculosis, including multidrug-resistant tuberculosis.[61] As other multidrug-resistant microorganisms [62-63] were emerging, some hospitals failed to recognize them as new problems and to add appropriate precautions that would contain them.

In view of these problems and concerns, no simple adjustment to any of the existing approaches—UP, BSI, the CDC isolation guideline, or other isolation systems—appeared likely to solve the conundrum. Clearly what was needed was a new synthesis of the various systems that would provide a guideline with logistically feasible recommendations for preventing the many infections that occur in hospitals through diverse modes of transmission. To achieve this, the new guideline would have to be (1) epidemiologically sound, (2) recognize the importance of all body fluids, secretions, and excretions in the transmission of nosocomial pathogens, (3) contain adequate precautions for infections transmitted by the airborne, droplet, and contact routes of transmission, (4) be as simple and user friendly as possible, and (5) use new terms to avoid confusion with existing systems.

Based on these considerations, a new guideline was subsequently developed. It contains three important changes from previous recommendations. First, it synthesizes the major features of UP [27-28] and BSI [29-30] into a single set of precautions to be used for the care of all patients in hospitals regardless of their presumed infection status. These precautions, called Standard Precautions, are designed to reduce the risk of transmission of bloodborne and other pathogens in hospitals. As a result of this synthesis, a large number of patients with diseases or conditions that previously required category- or disease-specific precautions in the 1983 CDC isolation guideline [4] are now covered under Standard Precautions and do not require additional precautions. Second, it collapses the old categories of isolation precautions (Strict Isolation, Contact Isolation, Respiratory Isolation, Tuberculosis Isolation, Enteric Precautions, and Drainage/Secretion Precautions) and the old disease-specific precautions into three sets of precautions based on routes of transmission for a smaller number of specified patients known or suspected to be infected or colonized with highly transmissible or epidemiologically important pathogens; these Transmission-based Precautions, designed to reduce the risk of airborne, droplet, and contact transmission in hospitals, are to be used in addition to Standard Precautions. Third, it lists specific syndromes in both adult and pediatric patients that are highly suspicious for infection and identifies appropriate Transmission-based Precautions to use on an empiric, temporary basis until a diagnosis can be made; these empiric, temporary precautions are also designed to be used in addition to Standard Precautions. The details of the guideline recommendations are presented in Part II, "Recommendations for Isolation Precautions in Hospitals."

In summary, the new guideline is another step in the evolution of isolation practices in U.S. hospitals. It is now recommended for review and use by hospitals with the following provision. No guideline can address all of the needs of the more than 6,000 U.S. hospitals, which range in size from 5 beds to more than 1,500 beds and serve very different patient populations. Hospitals are encouraged to review the guideline and to modify it according to what is possible, practical, and prudent.

Part II. Recommendations for Isolation Precautions in Hospitals

Rationale for Isolation Precautions in Hospitals

Spread of infection within a hospital requires three elements: a source of infecting microorganisms, a susceptible host, and a means of transmission for the microorganism.

Source

Human sources of the infecting microorganisms in hospitals may be patients, personnel, or, on occasion, visitors and may include persons with acute disease, persons in the incubation period of a disease, persons who are colonized by an infectious agent but have no apparent disease, or persons who are chronic carriers of an infectious agent. Other sources of infecting microorganisms can be the patient's own endogenous flora, which may be difficult to control, and inanimate environmental objects that have become contaminated, including equipment and medications.

Host

Resistance among persons to pathogenic microorganisms varies greatly. Some persons may be immune to infection or be able to resist colonization by an infectious agent; others exposed to the same agent may establish a commensal relationship with the infecting microorganism and become asymptomatic carriers; still others may develop clinical disease. Host factors such as age; underlying diseases; certain treatments with antimicrobials, corticosteroids or other immunosuppressive agents; irradiation; and breaks in the first line of defense mechanisms caused by such factors as surgical operations, anesthesia, and indwelling catheters may render patients more susceptible to infection.

Transmission

Microorganisms are transmitted in hospitals by several routes, and the same microorganism may be transmitted by more than one route. There are five main routes of transmission—contact, droplet, airborne, common vehicle, and vectorborne. For the purpose of this guideline, common vehicle and vectorborne transmission will be discussed only briefly since neither play a significant role in typical nosocomial infections.

1. *Contact Transmission*, the most important and frequent mode of transmission of nosocomial infections, is divided into two subgroups: direct-contact transmission and indirect-contact transmission.

a. Direct-contact transmission involves a direct body surface-to-body surface contact and physical transfer of microorganisms between a susceptible host and an infected or colonized person, such as occurs when a person turns a patient, gives a patient a bath, or performs other patient-care activities that require direct personal contact. Direct-contact transmission can also

occur between two patients with one serving as the source of the infectious microorganisms and the other as a susceptible host.

b. Indirect-contact transmission involves contact of a susceptible host with a contaminated intermediate object, usually inanimate, such as contaminated instruments or dressings, or contaminated gloves that are not changed between patients.

2. *Droplet transmission*, theoretically, is a form of contact transmission. However, the mechanism of transfer of the pathogen to the host is quite distinct from either direct- or indirect-contact transmission. Therefore, droplet transmission will be considered a separate route of transmission in this guideline. Droplets are generated from the source person primarily during coughing, sneezing, and talking, and during the performance of certain procedures such as suctioning and bronchoscopy. Transmission occurs when droplets containing microorganisms generated from the infected person are propelled a short distance through the air and deposited on the host's conjunctivae, nasal mucosa, or mouth. Transmission of this nature must not be confused with airborne transmission.

3. *Airborne Transmission* occurs by dissemination of either airborne droplet nuclei (small-particle residue [5 microns or smaller in size] of evaporated droplets containing microorganisms that remain suspended in the air for long periods of time) or dust particles containing the infectious agent. Microorganisms carried in this manner can be widely dispersed by air currents and may become inhaled by a susceptible host within the same room or over a longer distance from the source patient depending on environmental factors.

4. *Common Vehicle Transmission* applies to microorganisms transmitted by contaminated items such as food, water, medications, devices, and equipment.

5. *Vectorborne Transmission* occurs when vectors such as mosquitoes, flies, rats, and other vermin transmit microorganisms; this route of transmission is of less significance in hospitals in the United States than in other regions of the world.

Isolation precautions are designed to prevent transmission of microorganisms by these routes in hospitals. Since agent and host factors are more difficult to control, interruption of spread of infection is directed primarily at transmission. The recommendations presented in this guideline are based on this concept.

Placing a patient on isolation precautions, however, often presents certain disadvantages to the hospital, patients, personnel, and visitors. Isolation precautions may require specialized equipment and environmental modifications that add to the cost of hospitalization. Isolation precautions may make frequent visits by nurses, physicians, and other personnel inconvenient, and they may make it more difficult for personnel to give the prompt and frequent care that is sometimes required. The use of a multi-patient room for one patient uses valuable space that might otherwise accommodate several patients. Moreover, forced solitude deprives the patient of normal social relationships and may be psychologically harmful, especially to children. These disadvantages, however, must be weighed against the hospital's mission to prevent the spread of serious and epidemiologically important microorganisms in the hospital.

Fundamentals of Isolation Precautions

A variety of infection control measures are used for decreasing the risk of transmission of microorganisms in hospitals. These measures make up the fundamentals of isolation precautions.

Handwashing and Gloving

Handwashing is frequently called the single most important measure for preventing spread of infection. The scientific rationale, indications, methods, and products for handwashing have been delineated in other publications.[64-71]

Washing hands as promptly and thoroughly as possible between patient contacts and after contact with blood, body fluids, secretions, excretions, and equipment or articles contaminated by them is an important component of infection control and isolation precautions. In addition to handwashing, gloves play an important role in the prevention of the spread of infection.

Gloves are worn for three important reasons in hospitals. First, gloves are worn to provide a protective barrier and prevent gross contamination of the hands when touching blood, body fluids, secretions, excretions, mucous membranes, and nonintact skin;[27-29] the wearing of gloves in specified circumstances to reduce the risk of exposures to bloodborne pathogens is mandated by the OSHA bloodborne pathogens final rule.[51] Second, gloves are worn to reduce the likelihood that microorganisms present on the hands of personnel will be transmitted to patients during invasive or other patient-care procedures that involve touching a patient's mucous membranes and nonintact skin. Third, gloves are worn to reduce the likelihood that hands of personnel contaminated with microorganisms from a patient or a fomite can transmit these microorganisms to another patient; in this situation, gloves must be changed between patient contacts and hands washed after gloves are removed.

Wearing gloves does not replace the need for handwashing because (1) gloves may have small inapparent defects or be torn during use, and (2) hands can become contaminated during removal of gloves.[14-15,39,72-75] Failure to change gloves between patient contacts is an infection control hazard.[32]

Patient Placement

Appropriate patient placement is an important component of isolation precautions. When possible, patients with highly transmissible or epidemiologically important microorganisms are placed in a private room with handwashing and toilet facilities to reduce opportunities for transmission of microorganisms. A private room is also important to prevent direct- or indirect-contact transmission when the source patient has poor hygienic habits, contaminates the environment, or cannot be expected to assist in maintaining infection control precautions to limit transmission of microorganisms (i.e., infants, children, and patients with altered mental status).

When a private room is not available, infected patients are placed with appropriate roommates. Patients infected by the same microorganism can usually share a room provided (1) they are not infected with other potentially transmissible microorganisms, and (2) the likelihood of reinfection with the same organism is minimal. Such sharing of rooms, also referred to as cohorting patients, is especially useful during outbreaks or when there is a shortage of private rooms. When a private room is not available and cohorting is not achievable or recommended,[23] it is very important to consider the epidemiology and mode of transmission of the infecting pathogen and the patient population being served in determining patient placement. Under these circumstances, consultation with infection control professionals is advised before patient placement. Moreover, when an infected patient shares a room with a noninfected patient, it is also important that patients, personnel, and visitors take precautions to prevent the spread of

infection and that roommates are carefully selected.

Guidelines for construction, equipment, air handling, and ventilation for isolation rooms have been delineated in other publications.[76-78] A private room with appropriate air handling and ventilation is particularly important for reducing the risk of transmission of microorganisms from a source patient to susceptible patients and other persons in hospitals when the microorganism is spread by airborne transmission. Some hospitals use an isolation room with an anteroom as an extra measure of precaution to prevent airborne transmission. Adequate data regarding the need for anterooms, however, is not available. Ventilation recommendations for isolation rooms housing patients with pulmonary tuberculosis have been delineated in other CDC guidelines.[23]

Transport of Infected Patients

Limiting the movement and transport of patients infected with virulent or epidemiologically important microorganisms and ensuring that such patients leave their rooms only for essential purposes reduce opportunities for transmission of microorganisms in hospitals. When patient transport is necessary, it is important that (1) appropriate barriers (e.g., masks, impervious dressings) are worn or used by the patient to reduce the opportunity for transmission of pertinent microorganisms to other patients, personnel, and visitors and to reduce contamination of the environment, (2) personnel in the area to which the patient is to be taken are notified of the impending arrival of the patient and of the precautions to be used to reduce the risk of transmission of infectious microorganisms, and (3) patients are informed of ways by which they can assist in preventing the transmission of their infectious microorganisms to others.

Masks, Respiratory Protection, Eye Protection, Face Shields

Various types of masks, goggles, and face shields are worn alone or in combination to provide barrier protection. A mask that covers both the nose and mouth and goggles or a face shield are worn during procedures and patient-care activities that are likely to generate splashes or sprays of blood, body fluids, secretions, or excretions to provide protection of the mucous membranes of the eyes, nose, and mouth from contact transmission of pathogens. The wearing of masks, eye protection, and face shields in specified circumstances to reduce the risk of exposures to bloodborne pathogens is mandated by the OSHA bloodborne pathogens final rule.[51] A surgical mask is generally worn to provide protection against spread of infectious large-particle droplets that are transmitted by close contact and generally travel only short distances (up to 3 feet) from infected patients who are coughing or sneezing.

An area of major concern and controversy over the last several years has been the role and selection of respiratory protection equipment and the implications of a respiratory protection program for prevention of transmission of tuberculosis in hospitals. Traditionally, although the efficacy was not proven, a surgical mask was worn for isolation precautions in hospitals when patients were known or suspected to be infected with pathogens spread by the airborne route of transmission. In 1990, however, the CDC tuberculosis guidelines[18] stated that surgical masks may not be effective in preventing the inhalation of droplet nuclei and recommended the use of disposable particulate respirators despite the fact that the efficacy of particulate respirators in protecting persons for the inhalation of *Mycobacterium tuberculosis* had not been demonstrated. By definition, particulate respirators include dust-mist (DM), dust-fume-mist (DFM), or high-efficiency particulate air (HEPA) filter respirators certified by the CDC National Institute for Occupational Safety and Health (NIOSH); since the generic term particulate respirator was used in the 1990 guidelines, the implication was that any of these respirators provided sufficient protection.[79]

In 1993, a draft revision of the CDC tuberculosis guidelines[22] outlined performance criteria for respirators and stated that some DM or DFM respirators might not meet these criteria. After review of public comments, the guidelines were finalized in October 1994[23] with the draft respirator criteria unchanged. The only class of respirators that currently are (1) known to consistently meet or exceed the performance criteria outlined in the 1994 tuberculosis guidelines, and (2) certified by NIOSH (as required by OSHA) are HEPA filter respirators. However, recently NIOSH has announced that they will change their respirator certification process.[80] The proposed changes should enable users to select from a broader range of certified respirators for use in hospitals for protection against *M. tuberculosis*. Additional information on the evolution of respirator recommendations, regulations to protect hospital personnel, and the role of various federal agencies in respiratory protection for hospital personnel has been prepared for publication.[79]

Gowns and Protective Apparel

Various types of gowns and protective apparel are worn to provide barrier protection and reduce opportunities for transmission of microorganisms in hospitals. Gowns are worn to prevent contamination of clothing and protect the skin of personnel from blood and body fluid exposures. Gowns especially treated to make them impermeable to liquids, leg coverings, boots, or shoe covers provide greater protection to the skin when splashes or large quantities of infective material are present or anticipated. The wearing of gowns and protective apparel under specified circumstances to reduce the risk of exposures to bloodborne pathogens is mandated by the OSHA bloodborne pathogens final rule.[51]

Gowns are also worn by personnel during the care of patients infected with epidemiologically important microorganisms to reduce the opportunity for transmission of pathogens from patients or items in their environment to other patients or environments; when gowns are worn for this purpose, they are removed before leaving the patient's environment and hands are washed. Adequate data regarding the efficacy of gowns for this purpose, however, is not available.

Patient-Care Equipment and Articles

Many factors determine whether special handling and disposal of used patient-care equipment and articles are prudent or required, including the likelihood of contamination with infective material; the ability to cut, stick, or otherwise cause injury (needles, scalpels, and other sharp instruments [sharps]); the severity of the associated disease; and the environmental stability of the pathogens involved.[27,51,81-83] Some used articles are enclosed in containers or bags to prevent inadvertent exposures to patients, personnel, and visitors and to prevent contamination of the environment. Used sharps are placed in puncture-resistant containers; other articles are placed in a bag. One bag is adequate if the bag is sturdy and the article can be placed in the bag without contaminating the outside of the bag;[84] otherwise two bags (double bagging) are used.

The scientific rationale, indications, methods, products, and equipment for reprocessing patient-care equipment have been delineated in other publications.[68,83,85-90] Contaminated, reusable critical medical devices or

patient-care equipment (i.e., equipment that enters normally sterile tissue or through which blood flows) or semicritical medical devices or patient-care equipment (i.e., equipment that touches mucous membranes) are sterilized or disinfected (reprocessed) after use to reduce the risk of transmission of microorganisms to other patients; the type of reprocessing is determined by the article and its intended use, the manufacturer's recommendations, hospital policy, and any applicable guidelines and regulations.

Noncritical equipment (i.e., equipment that touches intact skin) contaminated with blood, body fluids, secretions, or excretions is cleaned and disinfected after use according to hospital policy. Contaminated disposable (single-use) patient-care equipment is handled and transported in a manner that reduces the risk of transmission of microorganisms and decreases environmental contamination in the hospital; the equipment is disposed of according to hospital policy and applicable regulations.

Linen and Laundry

Although soiled linen may be contaminated with pathogenic microorganisms, the risk of disease transmission is negligible if it is handled, transported, and laundered in a manner that avoids transfer of microorganisms to patients, personnel, and environments. Rather than rigid rules and regulations, hygienic and commonsense storage and processing of clean and soiled linen are recommended.[27,82,91] The methods for handling, transporting, and laundering of soiled linen are determined by hospital policy and any applicable regulations.

Dishes, Glasses and Cups, and Eating Utensils

No special precautions are needed for dishes, glasses and cups, or eating utensils. Either disposable or reusable dishes and utensils can be used for patients on isolation precautions. The combination of hot water and detergents used in hospital dishwashers is sufficient to decontaminate dishes, glasses and cups, and eating utensils.

Routine and Terminal Cleaning

The room or cubicle and bedside equipment of patients on isolation precautions are cleaned using the same procedures used for other patients unless the infecting microorganism(s) and the amount of environmental contamination indicates special cleaning. The methods, thoroughness, and frequency of cleaning and the products used are determined by hospital policy.

HICPAC Isolation Precautions

There are two tiers of HICPAC isolation precautions. In first, and most important, tier are those precautions designed for the care of all patients in hospitals regardless of their diagnosis or presumed infection status. Implementation of these "Standard Precautions" is the primary strategy for successful nosocomial infection control. In the second tier are precautions designed only for the care of specified patients. These additional "Transmission-based Precautions" are for patients known or suspected to be infected by epidemiologically important pathogens spread by airborne or droplet transmission or by contact with dry skin or contaminated surfaces.

Standard Precautions

Standard Precautions synthesize the major features of Universal (Blood and Body Fluid) Precautions [27-28] (designed to reduce the risk of transmission of bloodborne pathogens) and Body Substance Isolation [29-30] (designed to reduce the risk of transmission of pathogens from moist body substances) and applies them to all patients receiving care in hospitals regardless of their diagnosis or presumed infection status. Standard Precautions apply to (1) blood, (2) all body fluids, secretions, and excretions regardless of whether or not they contain visible blood, (3) nonintact skin, and (4) mucous membranes. Standard Precautions are designed to reduce the risk of transmission of microorganisms from both recognized and unrecognized sources of infection in hospitals.

Transmission-Based Precautions

Transmission-based Precautions are designed for patients documented or suspected to be infected with highly transmissible or epidemiologically important pathogens for which additional precautions beyond Standard Precautions are needed to interrupt transmission in hospitals. There are three types of Transmission-based Precautions: Airborne Precautions, Droplet Precautions, and Contact Precautions. They may be combined together for diseases that have multiple routes of transmission. When used either singularly or in combination, they are to be used in addition to Standard Precautions.

Airborne Precautions are designed to reduce the risk of airborne transmission of infectious agents. Airborne transmission occurs by dissemination of either airborne droplet nuclei (small-particle residue [5 microns or smaller in size] of evaporated droplets that may remain suspended in the air for long periods of time) or dust particles containing the infectious agent. Microorganisms carried in this manner can be widely dispersed by air currents and may become inhaled by or deposited on a susceptible host within the same room or over a longer distance from the source patient, depending on environmental factors. Airborne Precautions apply to patients known or suspected to be infected with epidemiologically important pathogens that can be transmitted by the airborne route.

Droplet Precautions are designed to reduce the risk of droplet transmission of infectious agents. Droplet transmission involves contact of the conjunctivae, or the mucous membranes of the nose or mouth of a susceptible person with large-particle droplets (larger than 5 microns in size) containing microorganisms generated from a person who has a clinical disease or is a carrier of the microorganism. Droplets are generated from the source person primarily during coughing, sneezing, or talking, and during the performance of certain procedures such as suctioning and bronchoscopy. Transmission via large-particle droplets requires close contact between source and recipient persons since droplets do not remain suspended in the air and generally travel only short distances, usually 3 feet or less, through the air. Droplet Precautions apply to any patient known or suspected to be infected with epidemiologically important pathogens that can be transmitted by infectious droplets.

Contact Precautions are designed to reduce the risk of transmission of epidemiologically important microorganisms by direct or indirect contact. Direct-contact transmission involves skin-to-skin contact and physical transfer of microorganisms to a susceptible host from an infected or colonized person, such as occurs when personnel turn a patient, give a patient a bath, or perform other patient-care activities that require physical contact. Direct-contact transmission can also occur between two patients (e.g., by hand contact), with one serving as the source of infectious microorganisms and the other as a susceptible host. Indirect-contact transmission involves contact of a susceptible host with a contaminated intermediate object, usually inanimate, in the patient's environment. Contact Precautions apply to specified patients known or suspected to be infected or colonized (presence of microorganism

in or on patient but without clinical signs and symptoms of infection) with epidemiologically important microorganisms than can be transmitted by direct- or indirect-contact.

A synopsis of the types of precautions and the patients requiring the precautions is listed in Table 1.

Empiric Use of Airborne, Droplet, or Contact Precautions

In many instances, the risk of nosocomial transmission of infection may be highest before a definitive diagnosis can be made and precautions based on that diagnosis implemented. The routine use of Standard Precautions for all patients should greatly reduce this risk for conditions other than those requiring Airborne, Droplet, or Contact Precautions. While it is not possible to prospectively identify all patients needing these enhanced precautions, certain clinical syndromes and conditions carry a sufficiently high risk to warrant the empiric addition of enhanced precautions while a more definitive diagnosis is pursued. A listing of such conditions and the recommended precautions beyond Standard Precautions is presented in Table 2.

The organisms listed under the column "Potential Pathogens" are not intended to represent the complete or even most likely diagnoses, but rather possible etiologic agents that require additional precautions beyond Standard Precautions until they can be ruled out. Infection control professionals are encouraged to modify or adapt this table according to local conditions. To ensure that appropriate empiric precautions are always implemented, hospitals must have systems in place to routinely evaluate patients according to these criteria as part of their preadmission and admission care.

Immunocompromised Patients

Immunocompromised patients vary in their susceptibility to nosocomial infections depending on the severity and duration of immunosuppression. They are generally at increased risk for bacterial infections from both endogenous and exogenous sources. The use of Standard Precautions for all patients and Transmission-based Precautions for specified patients as recommended in this guideline should reduce the acquisition by these patients of institutionally acquired bacteria from other patients and environments.

It is beyond the scope of this guideline to address the various measures that may be used for immunocompromised patients to delay or prevent acquisition of potential pathogens during temporary periods of neutropenia. Rather, the primary objective of this guideline is to prevent transmission of pathogens from infected or colonized patients in hospitals. Users of this guideline, however, are referred to the *Guideline for Prevention of Nosocomial Pneumonia*[92-93] for the HICPAC recommendations for prevention of nosocomial aspergillosis and Legionnaires' disease in immunocompromised patients.

HICPAC Recommendations for Isolation Precautions in Hospitals

The HICPAC recommendations presented below are categorized according to the scheme outlined in Table 3. The recommendations are limited to the topic of isolation precautions. Therefore, they must be supplemented by hospital policies and procedures for other aspects of infection and environmental control, occupational health, administrative and legal issues, and other issues beyond the scope of this guideline.

I. Education

Develop a system to ensure that hospital patients, personnel, and visitors are educated about use of precautions and their responsibility for adherence to them. *Category IB*

II. Standard Precautions

Use Standard Precautions, or the equivalent, for the care of all patients. *Category IB*

A. Handwashing

1. Wash hands after touching blood, body fluids, secretions, excretions, and contaminated items, whether or not gloves are worn. Wash hands immediately after gloves are removed, between patient contacts, and when otherwise indicated to avoid transfer of microorganisms to other patients or environments. *Category IB*

2. Use a plain (nonantimicrobial) soap for handwashing except for specific circumstances (e.g., control of outbreaks or hyperendemic infections) as defined by the infection control program. *Category II*

B. Gloves

Wear gloves (clean nonsterile gloves are adequate) when touching blood, body fluids, secretions, excretions, and contaminated items; put on clean gloves just before touching mucous membranes and nonintact skin. Remove gloves promptly after use, before touching noncontaminated items and environmental surfaces, and before going to another patient, and wash hands immediately to avoid transfer of microorganisms to other patients or environments. *Category IB*

C. Mask, Eye Protection, Face Shield

Wear a mask and eye protection or a face shield to protect mucous membranes of the eyes, nose, and mouth during procedures and patient-care activities that are likely to generate splashes or sprays of blood, body fluids, secretions, and excretions. *Category IB*

D. Gown

Wear a gown (a clean nonsterile gown is adequate) to protect skin and prevent soiling of clothing during procedures and patient-care activities that are likely to generate splashes or sprays of blood, body fluids, secretions, or excretions or cause soiling of clothing. Select a gown that is appropriate for the activity and amount of fluid likely to be encountered. Remove a soiled gown as promptly as possible and wash hands to avoid transfer of microorganisms to other patients or environments. *Category IB*

E. Patient-Care Equipment

Handle used patient-care equipment soiled with blood, body fluids, secretions, and excretions in a manner that prevents skin and mucous membrane exposures, contamination of clothing, and transfer of microorganisms to other patients and environments. Ensure that reusable equipment is not used for the care of another patient until it has been appropriately cleaned and reprocessed and single use items are properly discarded. *Category IB*

F. Linen

Handle, transport, and process used linen soiled with blood, body fluids, secretions, and excretions in a manner that prevents skin and mucous membrane exposures, contamination of clothing, and avoids transfer of microorganisms to other patients and environments. *Category IB*

G. Occupational Health and Bloodborne Pathogens

1. Take care to prevent injuries when using needles, scalpels, and other sharp instruments or devices; when handling sharp instruments after procedures; when cleaning used instruments; and when disposing of used needles. Never recap used needles or otherwise manipulate them using both hands, or any other technique that involves directing the point of a needle toward any part of the body; rather, use either a one-handed "scoop" technique or a mechanical device designed for holding the needle sheath. Do not remove used needles from disposable syringes by

hand, and do not bend, break, or otherwise manipulate used needles by hand. Place used disposable syringes and needles, scalpel blades, and other sharp items in appropriate puncture-resistant containers located as close as practical to the area in which the items were used, and place reusable syringes and needles in a puncture-resistant container for transport to the reprocessing area. *Category IB*

2. Use mouthpieces, resuscitation bags, or other ventilation devices as an alternative to mouth-to-mouth resuscitation methods in areas where the need for resuscitation is predictable. *Category IB*

H. Patient Placement

Place a patient who contaminates the environment or who does not (or cannot be expected to) assist in maintaining appropriate hygiene or environmental control in a private room. If a private room is not available, consult with infection control professionals regarding patient placement or other alternatives. *Category IB*

III. Airborne Precautions

In addition to Standard Precautions, use Airborne Precautions, or the equivalent, for patients known or suspected to be infected with microorganisms transmitted by airborne droplet nuclei (small-particle residue [5 microns or smaller in size] of evaporated droplets containing microorganisms that remain suspended in the air and can be widely dispersed by air currents within a room or over a long distance). *Category IB*

A. Patient Placement

Place the patient in a private room that has (1) monitored negative air pressure in relation to the surrounding areas, (2) a minimum of six air changes per hour, and (3) appropriate discharge of air outdoors or monitored high-efficiency filtration of room air before the air is circulated to other areas in the hospital.[23] Keep the room door closed and the patient in the room. When a private room is not available, place the patient in a room with a patient who has active infection with the same microorganism, unless otherwise recommended,[23] but with no other infection. When a private room is not available and cohorting is not desirable, consultation with infection control professionals is advised before patient placement. *Category IB*

B. Respiratory Protection

Wear respiratory protection when entering the room of a patient with known or suspected infectious tuberculosis.[23] Do not enter the room of patients known or suspected to have measles (rubeola) or varicella (chickenpox) if susceptible to these infections. *Category IB*

C. Patient Transport

Limit the movement and transport of the patient from the room to essential purposes only. If transport or movement is necessary, minimize patient dispersal of droplet nuclei by placing a surgical mask on the patient, if possible. *Category IB*

D. Additional Precautions for Preventing Transmission of Tuberculosis

Consult CDC Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities[23] for additional prevention strategies.

IV. Droplet Precautions

In addition to Standard Precautions, use Droplet Precautions, or the equivalent, for a patient known or suspected to be infected with microorganisms transmitted by droplets (large-particle droplets [larger than 5 microns in size] that can be generated by the patient during coughing, sneezing, talking, or the performance of procedures). *Category IB*

A. Patient Placement

Place the patient in a private room. When a private room is not available, place the patient in a room with a patient(s) who has active infection with the same microorganism, but with no other infection (cohorting). When a private room is not available and cohorting is not achievable, maintain spatial separation of at least 3 feet between the infected patient and other patients and visitors. *Category IB*

B. Mask

In addition to standard precautions, wear a mask when working within 3 feet of the patient. (Logistically, some hospitals may want to implement the wearing of a mask to enter the room.) *Category IB*

C. Patient Transport

Limit the movement and transport of the patient from the room to essential purposes only. If transport or movement is necessary, minimize patient dispersal of droplets by masking the patient, if possible. *Category IB*

V. Contact Precautions

In addition to Standard Precautions, use Contact Precautions, or the equivalent, for specified patients known or suspected to be infected or colonized with epidemiologically important microorganisms that can be transmitted by direct contact with the patient (hand or skin-to-skin contact that occurs when performing patient-care activities that require touching the patient's dry skin) or indirect contact (touching) with environmental surfaces or patient-care items in the patient's environment. *Category IB*

A. Patient Placement

Place the patient in a private room. When a private room is not available, place the patient in a room with a patient(s) who has active infection with the same microorganism, but with no other infection (cohorting). When a private room is not available and cohorting is not achievable, consider the epidemiology of the microorganism and the patient population when determining patient placement; consultation with infection control professionals is advised before patient placement. *Category IB*

B. Gloves and Handwashing

In addition to wearing gloves as outlined under Standard Precautions, wear gloves (clean nonsterile gloves are adequate) when entering the room. During the course of providing care for a patient, change gloves after having contact with infective material that may contain high concentrations of microorganisms (fecal material and wound drainage). Remove gloves before leaving the patient's room and wash hands immediately with an antimicrobial agent. After glove removal and handwashing, ensure that hands do not touch potentially contaminated environmental surfaces or items in the patient's room to avoid transfer of microorganisms to other patients or environments. *Category IB*

C. Gown

In addition to wearing a gown as outlined under Standard Precautions, wear a gown (a clean nonsterile gown is adequate) when entering the room if you anticipate that your clothing will have substantial contact with the patient, environmental surfaces, or items in the patient's room, or if the patient is incontinent, or has diarrhea, an ileostomy, a colostomy, or wound drainage not contained by a dressing. Remove the gown before leaving the patient's environment. After gown removal, ensure that clothing does not contact potentially contaminated environmental surfaces to avoid transfer of microorganisms to other patients or environments. *Category IB*

D. Patient Transport

Limit the movement and transport of the patient from the room to essential purposes only. If the patient is transported out of the room, ensure that precautions are maintained to minimize the risk of transmission of microorganisms to other patients and contamination of environmental surfaces or equipment. *Category IB*

E. Environmental Control

Ensure that patient-care items, bedside equipment, and frequently touched surfaces receive daily cleaning. *Category IB*

F. Patient-Care Equipment

When possible, dedicate the use of noncritical patient-care equipment and items such as a stethoscope, sphygmomanometer, bedside commode, or electronic rectal thermometer to a single patient (or cohort of patients infected or colonized with the pathogen requiring precautions) to avoid sharing between patients. If use of common equipment or items is unavoidable, then adequately clean and disinfect them before use for another patient. *Category IB*

G. Additional Precautions for Preventing the Spread of Vancomycin Resistance

Consult the HICPAC report on preventing the spread of vancomycin resistance for additional prevention strategies.[94]

VI. Adherence to Precautions

Periodically evaluate adherence to precautions, and use findings to direct improvements. *Category IB*

TABLE 1.—SYNOPSIS OF TYPES OF PRECAUTIONS AND PATIENTS REQUIRING THE PRECAUTIONS*

Standard Precautions

Use Standard Precautions for the care of all patients

Airborne Precautions

In addition to Standard Precautions, use Airborne Precautions for patients known or suspected to have serious illnesses transmitted by airborne droplet nuclei. Examples of such illnesses include:

(1) Measles
(2) Varicella (including disseminated zoster) †
(3) Tuberculosis §

Droplet Precautions

In addition to Standard Precautions, use Droplet Precautions for patients known or suspected to have serious illnesses transmitted by large particle droplets. Examples of such illnesses include:

(1) Invasive *Haemophilus influenzae* type b disease, including meningitis, pneumonia, epiglottitis, and sepsis
(2) Invasive *Neisseria meningitidis* disease, including meningitis, pneumonia, and sepsis
(3) Invasive multidrug-resistant *Streptococcus pneumoniae* disease, including meningitis, pneumonia, sinusitis, and otitis media
(4) Other serious bacterial respiratory infections spread by droplet transmission, including:
  (a) Diphtheria (pharyngeal)
  (b) Mycoplasma pneumonia
  (c) Pertussis
  (d) Pneumonic plague
  (e) Streptococcal pharyngitis, pneumonia, or scarlet fever in infants and young children
(5) Serious viral infections spread by droplet transmission, including:
  (a) Adenovirus †
  (b) Influenza
  (c) Mumps
  (d) Parvovirus B19
  (e) Rubella

Contact Precautions

In addition to Standard Precautions, use Contact Precautions for patients known or suspected to have serious illnesses easily transmitted by direct patient contact or by contact with items in the patient's environment. Examples of such illnesses include:

(1) Gastrointestinal, respiratory, skin, or wound infections or colonization with multidrug-resistant bacteria judged by the infection control program, based on current state, regional, or national recommendations, to be of special clinical and epidemiologic significance
(2) Enteric infections with a low infectious dose or prolonged environmental survival, including:
  (a) *Clostridium difficile*
  (b) For diapered or incontinent patients: enterohemorrhagic *Escherichia coli* O157:H7, *Shigella*, hepatitis A, or rotavirus
(3) Respiratory syncytial virus, parainfluenza virus, or enteroviral infections in infants and young children
(4) Skin infections that are highly contagious or that may occur on dry skin, including:
  (a) Diphtheria (cutaneous)
  (b) Herpes simplex virus (neonatal or mucocutaneous)
  (c) Impetigo
  (d) Major (noncontained) abscesses, cellulitis, or decubiti
  (e) Pediculosis
  (f) Scabies
  (g) Staphylococcal furunculosis in infants and young children
  (h) Staphylococcal scaled skin syndrome
  (i) Zoster (disseminated or in the immunocompromised host) †
(5) Viral/hemorrhagic conjunctivitis
(6) Viral hemorrhagic fevers (Lassa fever or Marburg virus)

* See Appendix A for a complete listing of infections requiring precautions, including appropriate footnotes.
† Certain infections require more than one type of precaution.
§ See CDC *Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities.*[23]

TABLE 2.—CLINICAL SYNDROMES OR CONDITIONS WARRANTING ADDITIONAL EMPIRIC PRECAUTIONS TO PREVENT TRANSMISSION OF EPIDEMIOLOGICALLY IMPORTANT PATHOGENS PENDING CONFIRMATION OF DIAGNOSIS *

Clinical syndrome or condition †	Potential Pathogens §	Empiric Precautions
DIARRHEA:		
(1) Acute diarrhea with a likely infectious cause in an incontinent or diapered patient.	Enteric pathogens ¶	Contact.
(2) Diarrhea in an adult with a history of broad spectrum or long-term antibiotics	*Clostridium difficile*	Contact.
MENINGITIS	*Neisseria meningitidis*	Droplet.
RASH OR EXANTHEMS, GENERALIZED, ETIOLOGY UNKNOWN:		
(1) Petechial/ecchymotic with fever	Neisseria meningitidis	Droplet.
(2) Vesicular	Varicella	Airborne and Contact
(3) Maculopapular with coryza and fever	Rubeola (measles)	Airborne.
RESPIRATORY INFECTIONS:		
(1) Cough/fever/upper lobe pulmonary infiltrate in an HIV-negative patient and a patient at low risk for HIV infection.	*Mycobacterium tuberculosis*	Airborne.
(2) Cough/fever/pulmonary infiltrate in any lung location in a HIV-infected patient and at high risk for HIV infection[23].	*Mycobacterium tuberculosis*	Airborne.
(3) Paroxysmal or severe persistent cough during periods of pertussis activity	*Bordetella pertussis*	Droplet.
(4) Respiratory infections, particularly bronchiolitis and croup, in infants and young children.	Respiratory syncytial or parainfluenza virus.	Contact.
RISK OF MULTIDRUG-RESISTANT MICROORGANISMS:		
(1) History of infection or colonization with multidrug-resistant organisms **	Resistant bacteria	Contact.
(2) Skin, wound, or urinary tract infection in a patient with a recent hospital or nursing home stay in a facility where multidrug-resistant organisms are prevalent.	Resistant bacteria	Contact.
SKIN OR WOUND INFECTION:		
Abscess or draining wound that cannot be covered	*Staphylococcus aureus*, Group A streptococcus.	Contact.

* Infection control professionals are encouraged to modify or adapt this table according to local conditions. To ensure that appropriate empiric precautions are always implemented, hospitals must have systems in place to routinely evaluate patients according to these criteria as part of their preadmission and admission care.

† Patients with the syndromes or conditions listed below may present with atypical signs or symptoms (e.g., pertussis in neonates and adults may not have paroxysmal or severe cough). The clinician's index of suspicion should be guided by the prevalence of specific conditions in the community as well as clinical judgement.

§ The organisms listed under the column "Potential Pathogens" are not intended to represent the complete or even most likely diagnoses, but rather possible etiologic agents that require additional precautions beyond Standard Precautions until they can be ruled out.

¶ These pathogens include enterohemorrhagic *Escherichia coli* O157:H7, *Shigella*, hepatitis A, and rotavirus.

** Resistant bacteria judged by the infection control program, based on current state, regional or national recommendations, to be of special clinical or epidemiological significance.

Table 3—Categorization of HICPAC Recommendations

Category IA. Strongly recommended for all hospitals and strongly supported by well-designed experimental or epidemiologic studies.

Category IB. Strongly recommended for all hospitals and viewed as effective by experts in the field and a consensus of HICPAC based on strong rationale and suggestive evidence, even though definitive scientific studies have not been done.

Category II. Suggested for implementation in many hospitals. Recommendations may be supported by suggestive clinical or epidemiologic studies, a strong theoretical rationale, or definitive studies applicable to some but not all hospitals.

No recommendation; unresolved issue. Practices for which insufficient evidence or consensus regarding efficacy exists.

APPENDIX A.—TYPE AND DURATION OF PRECAUTIONS NEEDED FOR SELECTED INFECTIONS AND CONDITIONS

Infection/Condition	Precautions	
	Type *	Duration ÷
Abscess:		
Draining, major[1]	C	DI
Draining, minor or limited[2]	S	
Acquired immunodeficiency syndrome (AIDS)[3]	S	
Actinomycosis	S	
Adenovirus infection, in infants and young children	D, C	DI
Amebiasis	S	
Anthrox:		
Cutaneous	S	
Pulmonary	S	
Antibiotic-associated colitis (see *Clostridium difficile*):		
Arthropodborne viral encephalitides (eastern, western, Venezuelan equine encephalomyelitis; St. Louis, California encephalitis).	S[4]	
Arthropodborne viral fevers (dengue, yellow fever, Colorado tick fever)	S[4]	
Ascariasis	S	
Aspergillosis	S	
Babesiosis	S	

APPENDIX A.—TYPE AND DURATION OF PRECAUTIONS NEEDED FOR SELECTED INFECTIONS AND CONDITIONS—Continued

Infection/Condition	Precautions	
	Type*	Duration†
Blastomycosis, North American, cutaneous or pulmonary	S	
Botulism	S	
Bronchiolitis (see respiratory infections in infants and young children):		
Brucellosis (undulant, Malta, Mediterranean fever)	S	
Campylobacter gastroenteritis (see gastroenteritis)		
Candidiasis, all forms including mucocutaneous	S	
Cat-scratch fever (benign inoculation lymphoreticulosis)	S	
Cellulitis, uncontrolled drainage	C	DI
Chancroid (soft chancre)	S	
Chickenpox (varicella)	A, C	F[5]
Chlamydia trachomatis:		
Conjunctivitis	S	
Genital	S	
Respiratory	S	
Cholera (see gastroenteritis)		
Closed-cavity infection:		
Draining, limited or minor	S	
Not draining	S	
Clostridium:		
C. botulium	S	
C. difficile	C	DI
C. perfringens		
Food poisoning	S	
Gas gangrene	S	
Coccidioidomycosis (valley fever):		
Draining lesions	S	
Pneumonia	S	
Colorado tick fever	S	
Congenital rubella	C	F[6]
Conjunctivitis:		
Acute bacterial	S	
Chlamydia	S	
Gonococcal	S	
Acute viral (acute hemorrhagic)	C	DI
Coxsackie virus disease (see enteroviral infection):		
Creutzfeldt-Jakob disease	S[7]	
Croup (see respiratory infections in infants and young children):		
Cryptococcosis	S	
Cryptosporidiosis (see gastroenteritis)		
Cysticercosis	S	
Cytomegalovirus infection, neonatal or immunosuppressed	S	
Decubitus ulcer, infected:		
Major[1]	C	DI
Minor or limited[2]	S	
Dengue	S[4]	
Diarrhea, acute-infective etiology suspected (see gastroenteritis):		
Diphtheria:		
Cutaneous	C	CN[8]
Pharyngeal	D	CN[8]
Echinococcosis (hydatidosis)	S	
Echovirus (see enteroviral infection)		
Encephalitis or encephalomyelitis (see specific etiologic agents)		
Endometritis	S	
Enterobiasis (pinworm disease, oxyuriasis)	S	
Enterococcus species (see multidrug-resistant organisms if epidemiologically significant or vancomycin resistant):		
Enterocolitis, *Clostridium difficile*	C	DH
Enteroviral infections:		
Adults	S	
Infants and children	C	DI
Epiglottitis, due to *Haemophilus influenzae*	D	U[24 HRS]
Epstein-Barr virus infection, including infectious mononucleosis	S	
Erythema infectiosum (also see Parvovirus B19)	S	
Escherichia coli gastroenteritis (see gastroenteritis)		
Food poisoning:		
Botulism	S	
Clostridium perfringens or *welchii*	S	
Staphylococcal	S	
Furunculosis—staphylococcal:		
Infants and young children	C	DI
Gangrene (Gas gangrene)	S	

APPENDIX A.—TYPE AND DURATION OF PRECAUTIONS NEEDED FOR SELECTED INFECTIONS AND CONDITIONS—Continued

Infection/Condition	Precautions	
	Type *	Duration ÷
Gastroenteritis:		
Campylobacter species	S[9]	
Cholera	S[9]	
Clostridium difficile	C	DI
Cryptosporidium species	S[9]	
Escherichia coli:		
Enterohemorrhagic O157:H7	S[9]	
Diapered or incontinent	C	DI
Other species	S[9]	
Giardia lamblia	S[9]	
Rotavirus	S[9]	
Diapered or incontinent	C	DI
Salmonella species (including *S. typhi*)	S[9]	
Shigella species	S[9]	
Diapered or incontinent	C	DI
Vibrio parahamolyticus	S[9]	
Viral (if not covered elsewhere)	S[9]	
Yersinia enterocolitica	S[9]	
German measles (rubella)	D	DI
Giardiasis (see gastroenteritis)		
Gonococcal ophthalmia neonatorum (gonorrheal ophthalmia, acute conjunctivitis of newborn)	S	
Gonorrhea	S	
Granuloma inguinale (donovaniasis, granuloma venereum)	S	
Guillain-Barre syndrome	S	
Hand, foot, and mouth disease (see enteroviral infection)		
Hemorrhagic fevers (for example, Lassa fever)[10]	C	DI
Hepatitis, viral:		
Type A	S	
Diapered or incontinent patients	C	F[11]
Type B—HBsAg positive	S	
Type C and other unspecified non-A, non-B	S	
Type E	S	
Herpangina (see enteroviral infection)		
Herpes simplex (*Herpesvirus hominis*):		
Encephalitis	S	
Neonatal[12]	C	DI
Mucocutaneous, disseminated or primary, severe	C	DI
Mucocutaneous, recurrent (skin, oral, genital)	S	
Herpes zoster (varicella-zoster):		
Localized in immunocompromised patient, or disseminated	A, C	DI
Localized in normal patient	S	
Histoplasmosis	S	
Hookworm disease (ancylostomiasis, uncinariasis)	S	
Human immunodeficiency virus (HIV) infection[3]	S	
Impetigo	C	U[24 HRS]
Infectious mononucleosis	S	
Influenza	D[13]	DI
Kawasaki syndrome	S	
Lassa fever[10]	C	DI
Legionnaires' disease	S	
Leprosy	S	
Leptospirosis	S	
Listeriosis	S	
Lyme disease	S	
Lymphocytic choriomeningitis	S	
Lymphogranuloma venereum	S	
Malaria	S	
Marburg virus disease[10]	C	DI
Measles (rubeola), all presentations	A	DI
Melioidosis, all forms	S	
Meningitis:		
Aseptic (nonbacterial or viral meningitis)	S	
Bacterial, gram-negative enteric, in neonates	S	
Fungal	S	
Haemophilus influenzae, known or suspected	D	U[24 HRS]
Listeria monocytogenes	S	
Neisseria meningitidis (meningococcal) known or suspected	D	U[24 HRS]
Pneumococcal	S	
Tuberculosis[14]	S	
Other diagnosed bacterial	S	

APPENDIX A.—TYPE AND DURATION OF PRECAUTIONS NEEDED FOR SELECTED INFECTIONS AND CONDITIONS—Continued

Infection/Condition	Precautions	
	Type*	Duration†
Meningococcal pneumonia	D	U[24 HRS]
Meningococcemia (meningococcal sepsis)	D	U[24 HRS]
Molluscum contagiosum	S	
Mucormycosis	S	
Multidrug-resistant organisms, infection or colonization[15]:		
Gastrointestinal	C	CN
Respiratory	C	CN
Pneumococcal	D	CN
Skin, wound, or burn	C	CN
Mumps (infectious parotitis)	D	F[16]
Mycobacteria, nontuberculosis (atypical):		
Pulmonary	S	
Wound	S	
Mycoplasma pneumonia	D	DI
Necrotizing enterocolitis	S	
Nacardiosis, draining lesions or other presentations	S	
Norwalk agent gastroenteritis (see viral gastroenteritis)		
Orf	S	
Parinfluenza virus infection, respiratory in infants and young children	C	DI
Parvovirus B19	D	F[17]
Pediculois	C	U[24 HRS]
Pertussis (whooping cough)	D	F[18]
Pinworm infection	S	
Plague:		
Bubonic	S	
Pneumonic	D	U[72 HRS]
Pleurodynia (see entervoviral infection)		
Pneumonia:		
Adenovirus	D, C	DI
Bacterial not listed elsewhere (including gram-negative bacterial)	S	
Chlamydia	S	
Fungal	S	
Haemophilus influenzae:		
Adults	S	
Infants and children (any age)	D	U[24 HRS]
Legionella	S	
Meningococcal	D	U[24 HRS]
Multidrug-resistant bacterial (see multidrug-resistant organisms)		
Mycoplasma (Primary atypical (pneumonia)	D	DI
Pneumococcal	S	
Multidrug-resistant (see multidrug-resistant organisms)		
Pneumocytis carinii	S[19]	
Pseudomonas cepacia in cystic fibrosis (CF) patients, including respiratory tract colonization	C[20]	DH
Staphylococcus aureus	S	
Streptococuss, Group A:		
Adults	S	
Infants and young children	D	U[24 HRS]
Viral:		
Adults	S	
Infants and young children (see respiratory infectious disease, acute)		
Poliomyelitis	S	
Psittacosis (ornithosis	S	
Q fever	S	
Rabies	S	
Rat-bite fever (*Streptobacillus moniliformis* disease, *spirilium minus* disease)	S	
Ralapsing fever	S	
Resistant bacterial infection or colonization (see multidrug-resistant organisms)		
Respiratory infectious disease, acute (if not covered elsewhere):		
Adults	S	
Infants and young children[3]	C	DI
Respiratory syncytial virus infection, in infants and young children, and immunocompromised adults	C	DI
Reye syndrome	S	
Rheumatic fever	S	
Rickettsial fevers, tickborne (Rocky Mountain spotted fever, tickborne typhus fever)	S	
Rickettsialpox (vesicular rickettsiosis)	S	
Ringworm (dermatophytosis, dermatomycosis, tinea	S	
Ritter's disease (Staphylococcal scalded skin syndrome	C[21]	DI
Rocky Mountain spotted fever	S	
Roseola infantum (exanthem subitum)	S	
Rotavirus infection (see gastroenteritis)		

APPENDIX A.—TYPE AND DURATION OF PRECAUTIONS NEEDED FOR SELECTED INFECTIONS AND CONDITIONS—Continued

Infection/Condition	Precautions	
	Type*	Duration†
Rubella (German measles) (also congenital rubella)	D	F[22]
Salmonellosis (see gastroenteritis)		
Scabies	C	U 24 HRS
Scalded skin syndrome, staphylococcal (Ritter's diease)	C[21]	DI
Schistosomiasis (bilharziasis)	S	
Shigellois (see gastroenteritis)		
Sporotrichosis	S	
Spirillium minus disease (rat-bite fever)	S	
Staphylococcal disease (S. aureus):		
Skin, wound, or burn:		
Major[1]	C	DI
Minor or limited[2]	S	
Enterocolitis	S	
Multidrug-resistant (see multidrug-reistant organisms)		
Pneumonia	S	
Scalded skin syndrome	C	DI
Toxic shock syndrome	S	
Streptobacillus moniliformis disease (rat-bite fever)	S	
Streptococcal disease (group A *Streptococcus):*		
Skin, wound, or burn:		
Major[1]	C	U 24 HRS
Minor or limited[2]	S	
Endometritis (puerperal sepsis)	S	
Pharyngitis in infants and young children	D	U 24 HRS
Pneumonia in infants and young children	D	U 24 HRS
Scarlet fever in infants and young children	D	U 24 HRS
Streptococcal disease (group B *Streptococcus*), neonatal	S	
Streptococcal disease (not group A or B) unless covered elsewhere	S	
Multidrug-resistant (see multidrug-resistant organisms)		
Strongyloidiasis	S	
Syphilis:		
Skin and mucous membrane, including congenital, primary, secondary	S	
Latent (tertiary) and seropositivity without lesions	S	
Tapeworm disease:		
Hymenolepis nana	S	
Taenia solium (pork)	S	
Other	S	
Tetanus	S	
Tinea (fungus infection dermatophytosis, dermatomycosis, ringworm)	S	
Toxoplasmosis	S	
Toxic shock syndrome (Staphylococcal disease)	S	
Trachoma, acute	S	
Trench mouth (Vincent's angina)	S	
Trichinosis	S	
Trichomoniasis	S	
Trichuriasis (whipworm disease)	S	
Tuberculosis:		
Extrapulmonary, draining lesion (including scrofula)	S	
Extrapulmonary, meningitis[14]	S	
Pulmonary, confirmed or suspected or laryngeal disease	A	F[23]
Skin-test positive with no evidence of current pulmonary disease	S	
Tularemia:		
Draining lesion	S	
Pulmonary	S	
Typhoid (*Salmonella typhi*) fever (see gastroenteritis)		
Typhus, endemic and epidemic	S	
Urinary tract infection (including pyelonephritis), with or without urinary catheter	S	
Varicella (chickenpox)	A, C	F[5]
Vibrio parahaemolyticus (see gastroenteritis)		
Vincent's angina (trench mouth)	S	
Viral diseases:		
Respiratory (if not covered elsewhere):		
Adults	S	
Infants and young children (see respiratory infectious disease, acute).		
Whooping cough (pertussis)	D	F[18]
Wound infections:		
Major[1]	C	DI
Minor or limited[2]	S	
Yersinia enterocolitica gastroenteritis (see gastroenteritis)		
Zoster (varicella-zoster):		

APPENDIX A.—TYPE AND DURATION OF PRECAUTIONS NEEDED FOR SELECTED INFECTIONS AND CONDITIONS—Continued

Infection/Condition	Precautions	
	Type*	Duration†
Localized in immunocompromised patient, disseminated	A, C	F[5]
Localized in normal patient	S	
Zygomycosis (phycomycosis, mucormycosis)	S	

[1] No dressing or dressing does not adequately contain drainage.
[2] Dressing covers and adequately contains drainage.
[3] Also see syndromes or conditions listed in Table 2.
[4] Install screens in windows and doors in endemic areas.
[5] Maintain precautions until all lesions are crusted. Use varicella zoster immune globulin (VZIG) when appropriate, and discharge exposed susceptible patients before the 10th day after exposure, if possible. Place remaining exposed susceptible patients on precautions beginning 10 days after exposure and continue until 21 days after last exposure (up to 28 days if VZIG has been given). Susceptible persons should stay out of room of patients on precautions.
[6] Place infant on precautions during any admission until 1 year of age unless nasopharyngeal and urine cultures are negative for virus after age 3 months.
[7] Additional special precautions are necessary for handling and decontamination of blood, body fluids and tissues, and contaminated items from patients with confirmed or suspected disease. See latest College of American Pathologists (Northfield, Illinois) guidelines or other references.
[8] Until two cultures taken at least 24 hours apart are negative.
[9] Use contact precautions for diapered or incontinent children <6 years of age for duration of illness.
[10] Call state health department and CDC for advice about management of a suspected case.
[11] Maintain precautions in infants and children <3 years of age for duration of hospitalization; in children 3–14 years of age, until 2 weeks after onset of symptoms; and in others, until 1 week after onset of symptoms.
[12] For infants delivered vaginally or by C-section and if mother has active infection and membranes have been ruptured for more than 4–6 hours.
[13] This recommendation is made recognizing the logistic difficulties and physical plant limitations that may face hospitals admitting multiple patients with suspected influenza during community outbreaks. If sufficient private rooms are unavailable, consider cohorting patients, or at the very least, avoid room-sharing with high risk patients. See Guideline for Prevention of Nosocomial Pneumonia[92–93] For additional prevention and control strategies.
[14] Patient should be examined for evidence of current (active) pulmonary tuberculosis. If evidence exists, additional precautions are necessary (see tuberculosis).
[15] Resistant bacteria judged by the infection control program, based on current state, regional, or national recommendations, to be of special clinical and epidemiologic significance.
[16] For 9 days after onset of swelling.
[17] Maintain precautions for duration of hospitalization when chronic disease occurs in an immunodeficient patient. For patients with transient aplastic crisis or red cell crisis, maintain precautions for 7 days.
[18] Maintain precautions until 5 days after patient is placed on effective therapy.
[19] Avoid placement in the same room with an immunocompromised patient.
[20] Avoid cohorting or placement in the same room with a CF patient who is not infected or colonized with P. CEPACIA.
[21] Blistering is due to the hematogenous dissemination of toxin, not to presence of organisms in the blisters. However, such patients may be heavily colonized with staphylococci because of their skin problems; thus, contact precautions are recommended.
[22] Until 7 days after onset of rash.
[23] Discontinue precautions only when TB patient is on effective therapy, is improving clinically, and has 3 consecutive negative sputum smears collected on different days, or TB is ruled out. Also see CDC Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities.[23]

*Type of Precautions
A—Airborne.
C—Contact.
D—Droplet.
S—Standard.
When A, C, and D are specified, also use S.

†Duration of Precautions
CN—Until off antibiotics and culture negative.
DH—Duration of hospitalization.
DI—Duration of illness (with wound lesions, DI means until they stop draining).
U—Until time specified in hours (HRS) after initiation of effective therapy.
F—See footnote number.

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H.R. 1348/P.L. 103–449

To establish the Quinebaug and Shetucket Rivers Valley National Heritage Corridor in the State of Connecticut, and for other purposes. (Nov. 2, 1994; 108 Stat. 4752; 14 pages)

H.R. 3050/P.L. 103–450

To expand the boundaries of the Red Rock Canyon National Conservation Area. (Nov. 2, 1994; 108 Stat. 4766; 3 pages)

H.R. 3059/P.L. 103–451

National Maritime Heritage Act of 1994 (Nov. 2, 1994; 108 Stat. 4769; 14 pages)

H.R. 3313/P.L. 103–452

Veterans Health Programs Extension Act of 1994 (Nov. 2, 1994; 108 Stat. 4783; 7 pages)

H.R. 3984/P.L. 103–453

To designate the building located at 216 Coleman Avenue in Waveland, Mississippi, for the period of time during which it houses operations of the United States Postal Service, as the "John Longo, Jr. Post Office". (Nov. 2, 1994; 108 Stat. 4790; 1 page)

H.R. 4180/P.L. 103–454

To provide for the annual publication of a list of federally recognized Indian tribes, and for other purposes. (Nov. 2, 1994; 108 Stat. 4791; 6 pages)

H.R. 4193/P.L. 103–455

To designate the building located at 100 Vester Gade, in Cruz Bay, Saint Thomas, Virgin Islands, for the period of time which it houses operations of the United States Postal Service, as the "Ubaldina Simmons Post Office". (Nov. 2, 1994; 108 Stat. 4797; 1 page)

H.R. 4452/P.L. 103–456

To designate the United States Post Office building located at 115 North Chester in Ruleville, Mississippi, as the "Fannie Lou Hamer Post Office". (Nov. 2, 1994; 108 Stat. 4798; 1 page)

H.R. 4497/P.L. 103–457

To award a congressional gold medal to Rabbi Menachem Mendel Schneerson. (Nov. 2, 1994; 108 Stat. 4799; 2 pages)

H.R. 4551/P.L. 103–458

To designate the United States Post Office building located at 301 West Lexington Street in Independence, Missouri, as the "William J. Randall Post Office". (Nov. 2, 1994; 108 Stat. 4801; 1 page)

H.R. 4571/P.L. 103–459

To designate the United States Post Office building located at 103-104 Estate Richmond in Saint Croix, Virgin Islands, as the "Wilbert Armstrong Post Office". (Nov. 2, 1994; 108 Stat. 4802; 1 page)

H.R. 4595/P.L. 103–460

To designate the building located at 4021 Laclede in St. Louis, Missouri, for the period of time during which it houses operations of the United States Postal Service, as the "Marian Oldham Post Office". (Nov. 2, 1994; 108 Stat. 4803; 1 page)

H.R. 4598/P.L. 103–461

To direct the Secretary of the Interior to make technical corrections to maps relating to the Coastal Barrier Resources System, and to authorize appropriations to carry out the Coastal Barrier Resources Act. (Nov. 2, 1994; 108 Stat. 4804; 1 page)

H.J. Res. 271/P.L. 103–462

Designating the month of November in each of the calendar years 1993 and 1994 as "National American Indian Heritage Month". (Nov. 2, 1994; 108 Stat. 4805; 2 pages)

H.J. Res. 326/P.L. 103–463

Designating January 16, 1995, as "National Good Teen Day". (Nov. 2, 1994; 108 Stat. 4807; 1 page)

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§§ 1.908–1.1000	(869–022–00093–4)	27.00	Apr. 1, 1994
§§ 1.1001–1.1400	(869–022–00094–2)	24.00	Apr. 1, 1994
§§ 1.1401–End	(869–022–00095–1)	32.00	Apr. 1, 1994
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50–299	(869–022–00099–3)	14.00	Apr. 1, 1994
300–499	(869–022–00100–1)	24.00	Apr. 1, 1994
500–599	(869–022–00101–9)	6.00	[4] Apr. 1, 1990

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200-End	(869-022-00104-3)	13.00	Apr. 1, 1994
28 Parts:			
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29 Parts:			
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*500-899	(869-022-00109-4)	35.00	July 1, 1994
*900-1899	(869-022-00110-8)	17.00	July 1, 1994
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1910 (§§ 1910.1000 to end)	(869-019-00112-3)	21.00	July 1, 1993
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30 Parts:			
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*200-699	(869-022-00117-5)	19.00	July 1, 1994
*700-End	(869-022-00118-3)	27.00	July 1, 1994
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*1-190	(869-022-00121-3)	31.00	July 1, 1994
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33 Parts:			
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34 Parts:			
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*35	(869-022-00133-7)	12.00	July 1, 1994
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*400-424	(869-022-00152-3)	27.00	July 1, 1994
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*790-End	(869-022-00155-8)	27.00	July 1, 1994
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*201-End	(869-022-00159-1)	13.00	July 1, 1994
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49 Parts:			
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50 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

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